SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1890.

No. 288.

MRS. SARAH E. MARSHALL, PLAINTIFF IN ERROR,

vs.

HENRY B. HOLMES, SHERIFF, AND DAVID MAYER.

IN ERROR TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT OF THE STATE OF LOUISIANA.

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1 Mrs. Sarah E. Marshall
vs.
H. B. Holmes, Sheriff, *et als.* } No. 645.

Pleas before the honorable eighth district court for the parish of Madison, State of Louisiana.

Be it known and remembered that on the twentieth day of April, in the year of our Lord one thousand eight hundred and eighty-five, Mistress Sarah E. Marshall, by her attorneys-at-law, Messrs. Wade R. Young and Walton Farrar, filed in the office of the clerk of 8th judicial district court in and for the parish of Madison and State of Louisiana, her certain petition for injunction in the words and figures as follows, to wit:

2 *Petition.*

Petition, affidavit, and order.

To the honl. the judge of the 8th district court for the parish of Madison:

The petition of Mrs. Sarah E. Marshall, a resident and citizen of the State of New York, respectfully shows that David Mayer, a resident and citizen of the State of Mississippi, has recently, in a certain suit on the docket of your honl. court entitled D. Mayer *vs.* William Talliaferro & Mrs. Sarah E. Marshall, No. 607, obtained judgment against your petitioner for the sum of one hundred and twenty-seven $\frac{50}{100}$ dollars.

That, in pursuance of an agreement of counsel that the judgment in one suit should be decisive of the issues in other suits between the same parties and relating to the same subject-matter, judgments have been entered up against your petitioner and in favor of the said Mayer in the following suits and for the following sums:

D. Mayer *vs.* James Thomas.	No. 595	$105 16
" " Noah Morrison.	" 596	99 00
" " David King.	" 597	92 40
" " March Gilbert.	" 598	132 00
" " Henry Neal.	" 599	47 63
" " Robert Levy.	" 600	104 50
" " Maranda Gibson.	" 601	117 70
" " Margaret Washington.	" 602	268 80
" " Reuben Willis.	" 603	194 10
D. Mayer *vs.* Thomas Bennett.	" 604	71 50
3 D. Mayer *vs.* Jos. Jones.	No. 605	104 30
" " Wesley Conniss.	" 606	361 20
D. Mayer *vs.* Charls Blue.	" 608	155 32
" " Spencer Washington.	" 609	61 60
" " Warren Robacker.	" 610	------
" " Joshua Blue.	" 611	120 00

D. Mayer *vs.* Willis Hunt.	No. 612	$132	00
" " Samuel Simpson.	" 613	123	75
" " Henry Hunt.	" 614	141	24
" " Elias Jones.	" 615	45	32
" " Henderson R. Herd.	" 616	172	92
" " James Grandison.	" 617	201	72
" " Elias Chambliss.	" 618	109	60

That in the said several suits, to all of which your petitioner was a party defendant, the said D. Mayer obtained judgment against your petitioner for the sum of three thousand and eighty-nine $\frac{31}{100}$ dollars ($3,089.31). Your petitioner respectfully shows that the judgments so rendered were obtained, as your petitioner believes, and believing charges, on false testimony and on forged documents; that it would be against equity and good conscience to permit them to be executed, and that they should be annulled and avoided for the following reasons:

That your petitioner, as usufructuary of the plantation Cabin Teele, in your said parish, employed one Elijah Boyd as an agent on said plantation to collect the rents and ship the cotton re-
4 ceived; that the said Boyd died in the year 1884, and that said Mayer, pretending to have a contract with said Boyd, by which your petitioner was bound to him as a furnisher of supplies *in solido* with the several defendants named in the suits hereinbefore mentioned, brought said suits and made petitioner a party defendant thereto; that petitioner answered in the several suits that said Boyd, if he made any such contract as alleged, had no power, right, or authority to do so; that a trial was had of the suit No. 607, and the said Mayer introduced evidence of the existence of a letter from your petitioner to the said Boyd authorizing him, the said Boyd, to make a contract by which her lien as lessor on the crops produced by the several defendants and other tenants on said plantation should be waived in favor of the said Mayer or of others as furnishers of supplies to said tenants; that upon such evidence so offered, and of the existence of which petitioner could not possibly be aware and of which she had no knowledge until subsequent to the trial, judgment was rendered against her in said suit and in the several other suits mentioned. Your petitioner shows that the said Boyd, who was an agent, with only a general power of administration, had no authority to bind her or to waive her lien as lessor in order to procure supplies for the several defendants and other
5 tenants, and that the pretended letter authorizing him to make such contract, if it ever had an existence, which petitioner denies, was a false and forged document, not written and not signed by her; that your petitioner has never authorized the said Boyd or any other person whatsoever to waive her lien as lessor in favor of the said Mayer or any other furnisher of supplies, and has never written the pretended letter or any other letter to the said Boyd or to any other person whatsoever containing such authority; that, to the contrary, as soon as she was informed after the death of said Boyd that he had made such pretended contract and other contracts by

which it was sought to bind her, she instructed her agents and attorneys to take immediate steps to disavow the authority of said Boyd to make such contracts; that the testimony of said Mayer as to the existence of said pretended letter is false and in pursuance of a conspiracy to defraud petitioner, or that said pretended letter, if it ever had an existence, is a false and forged document; that this testimony and much more testimony necessary to establish the falsity of said evidence upon which said judgments were obtained and the forgery of said pretended letter to said Boyd was unknown to petitioner at the time of the trial and could not have been known to or anticipated by her, and has been discovered by her since the
6 rendition of said judgments in said suit and since the lapse of the legal delays within which a motion could be made for a new trial, and that there has been no laches on her part in failing to show the falsity of such evidence and the forgery of such pretended letter on the trial of the cause.

Wherefore, the premises considered, she prays that a writ of injunction issue, directed to the said David Mayer and to Henry B. Holmes, the sheriff of your said parish, enjoining and restraining them and each of them from executing or attempting to execute said judgments or any one of them; that the said David Mayer be cited to answer this demand, and that said judgments be annulled and avoided as obtained upon false testimony and forged documents, and for costs and general and equitable relief.

WALTON FARRAR,
WADE R. YOUNG, *Att'ys.*

Affidavit.

Before me, the undersigned authority, personally came and appeared Walton Farrar, who, being by me duly sworn, deposes and says that he is the attorney or one of the attorneys for the petitioner; that she is absent from the parish of Madison and State of Louisiana, and that all the allegations made and facts stated in the foregoing petition are true and correct and render a writ of injunction
7 necessary; that the Honl. E. J. Delony, judge of the 8th judicial district, is now absent from the parish of Madison.

WALTON FARRAR.

Sworn to and subscribed before me this 20th day of April, A. D. 1885.

[L. S.] F. M. DAWSON,
Clerk 8th District Court.

Order.

The foregoing petition and affidavit considered, it is ordered that the prayer of the petition be granted, and that writs of injunction issue herein as prayed for.

Thus done and signed this 20th day of April, A. D. 1885.

[L. S.] F. M. DAWSON,
Clerk 8th District Court.

D. Mayer *vs.* Willis Hunt.	No. 612	$132 00
" " Samuel Simpson.	" 613	123 75
" " Henry Hunt.	" 614	141 24
" " Elias Jones.	" 615	45 32
" " Henderson R. Herd.	" 616	172 92
" " James Grandison.	" 617	201 72
" " Elias Chambliss.	" 618	109 60

That in the said several suits, to all of which your petitioner was a party defendant, the said D. Mayer obtained judgment against your petitioner for the sum of three thousand and eighty-nine $\frac{31}{100}$ dollars ($3,089.31). Your petitioner respectfully shows that the judgments so rendered were obtained, as your petitioner believes, and believing charges, on false testimony and on forged documents; that it would be against equity and good conscience to permit them to be executed, and that they should be annulled and avoided for the following reasons:

That your petitioner, as usufructuary of the plantation Cabin Teele, in your said parish, employed one Elijah Boyd as an agent on said plantation to collect the rents and ship the cotton re-
4 ceived; that the said Boyd died in the year 1884, and that said Mayer, pretending to have a contract with said Boyd, by which your petitioner was bound to him as a furnisher of supplies *in solido* with the several defendants named in the suits hereinbefore mentioned, brought said suits and made petitioner a party defendant thereto; that petitioner answered in the several suits that said Boyd, if he made any such contract as alleged, had no power, right, or authority to do so; that a trial was had of the suit No. 607, and the said Mayer introduced evidence of the existence of a letter from your petitioner to the said Boyd authorizing him, the said Boyd, to make a contract by which her lien as lessor on the crops produced by the several defendants and other tenants on said plantation should be waived in favor of the said Mayer or of others as furnishers of supplies to said tenants; that upon such evidence so offered, and of the existence of which petitioner could not possibly be aware and of which she had no knowledge until subsequent to the trial, judgment was rendered against her in said suit and in the several other suits mentioned. Your petitioner shows that the said Boyd, who was an agent, with only a general power of administration, had no authority to bind her or to waive her lien as lessor in order to procure supplies for the several defendants and other
5 tenants, and that the pretended letter authorizing him to make such contract, if it ever had an existence, which petitioner denies, was a false and forged document, not written and not signed by her; that your petitioner has never authorized the said Boyd or any other person whatsoever to waive her lien as lessor in favor of the said Mayer or any other furnisher of supplies, and has never written the pretended letter or any other letter to the said Boyd or to any other person whatsoever containing such authority; that, to the contrary, as soon as she was informed after the death of said Boyd that he had made such pretended contract and other contracts by

which it was sought to bind her, she instructed her agents and attorneys to take immediate steps to disavow the authority of said Boyd to make such contracts; that the testimony of said Mayer as to the existence of said pretended letter is false and in pursuance of a conspiracy to defraud petitioner, or that said pretended letter, if it ever had an existence, is a false and forged document; that this testimony and much more testimony necessary to establish the falsity of said evidence upon which said judgments were obtained and the forgery of said pretended letter to said Boyd was unknown to petitioner at the time of the trial and could not have been known to or anticipated by her, and has been discovered by her since the
6 rendition of said judgments in said suit and since the lapse of the legal delays within which a motion could be made for a new trial, and that there has been no laches on her part in failing to show the falsity of such evidence and the forgery of such pretended letter on the trial of the cause.

Wherefore, the premises considered, she prays that a writ of injunction issue, directed to the said David Mayer and to Henry B. Holmes, the sheriff of your said parish, enjoining and restraining them and each of them from executing or attempting to execute said judgments or any one of them; that the said David Mayer be cited to answer this demand, and that said judgments be annulled and avoided as obtained upon false testimony and forged documents, and for costs and general and equitable relief.

WALTON FARRAR,
WADE R. YOUNG, *Att'ys.*

Affidavit.

Before me, the undersigned authority, personally came and appeared Walton Farrar, who, being by me duly sworn, deposes and says that he is the attorney or one of the attorneys for the petitioner; that she is absent from the parish of Madison and State of Louisiana, and that all the allegations made and facts stated in the foregoing petition are true and correct and render a writ of injunction
7 necessary; that the Honl. E. J. Delony, judge of the 8th judicial district, is now absent from the parish of Madison.

WALTON FARRAR.

Sworn to and subscribed before me this 20th day of April, A. D. 1885.

[L. S.] F. M. DAWSON,
Clerk 8th District Court.

Order.

The foregoing petition and affidavit considered, it is ordered that the prayer of the petition be granted, and that writs of injunction issue herein as prayed for.

Thus done and signed this 20th day of April, A. D. 1885.

[L. S.] F. M. DAWSON,
Clerk 8th District Court.

(Endorsed:) "No. 645, D. C. No. 37, C. C. 8th district court. Mrs. Sarah E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* Pet. for injunction. Filed April 20th, 1885. F. M. Dawson, clerk. (Filed in the circuit court March 12, 1887. F. M. Dawson, clerk.")

Service Accepted by Sheriff.

"I hereby acknowledge service of the within petition and waive service of citation & writ of injunction this 21st day of April, 1885.

"H. B. HOLMES, *Sheriff.*"

Bond for Injunction.

STATE OF LOUISIANA,
Parish of Madison.

Eighth District Court.

Mrs. S. E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

Know all men by these presents that Mrs. Sarah E. Marshall, as principal, and A. W. Crandell & Hugh R. Lucas, as security,
8 are held and firmly bound unto F. M. Dawson, clerk of the eighth district court in and for said parish and State, and his successors in office, in the just and full sum of two thousand dollars; in which sum, well and truly to be paid, we hereby bind ourselves, our heirs, administrators, and assigns, firmly by these presents, this 20th day of April, A. D. 1885. The condition of this obligation is such that whereas [the above-bounden Mrs. Sarah E. Marshall has this day prayed for and obtained from the said court a writ of injunction in the above-entitled suit: Now, if the above-bound Mrs. Sarah E. Marshall shall well and truly pay to and satisfy all such costs and damages as the said H. B. Holmes *et als.*, defendants, may recover against her in case it shall be decided that the writ of injunction has been wrongfully obtained, then this obligation to become null and void; otherwise to remain in full force and virtue.

MRS. SARAH E. MARSHALL,
By WALTON FARRAR, *Att'y.*
A. W. CRANDALL.
HUGH R. LUCAS.

Witnesses:

____ ____.
____ ____.

(Endorsed:) "No. 645. Eighth district court. Injunction bond. Filed April 20th, 1885. F. M. Dawson, clerk."

9 *Supplemental Petition.*

8th Dist. Court, Parish of Madison, State of Louisiana.

Mrs. S. E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } 645.

Now comes Mrs. S. E. Marshall, plaintiff in above-styled proceeding, and, with leave of the court first had and obtained, files this her supplemental petition, wherein she avers that all the allegations of her original petition are true and correct, and that David Mayer, as alleged, is a non-resident of the State of Louisiana, and that it is necessary that a *curator ad hoc* should be appointed upon whom service of her original and this her supplemental petition may be made. Wherefore she prays that John B. Stone, Esq., be appointed *curator ad hoc* to represent the absent defendant, David Mayer, and prays further as in her original petition.

WADE R. YOUNG &
WALTON FARRAR, *Att'ys.*

The foregoing petition considered, it is ordered that John B. Stone, Esq., be appointed *curator ad hoc* to represent the absent defendant, David Mayer, and he be cited herein as such. Done and signed at chambers this 9th day of May, A. D. 1885.

E. J. DELONY,
Judge 8th Judicial Dist.

10 I accept within appointment this 13th May, 1885.

JNO. B. STONE.

(Endorsed:) "No. 645. 8th dist. court. Mrs. S. E. Marshall *vs.* H. B. Holmes, sh'ff, *et als.* Supplemental petition. Filed May 13th, 1885. W. H. McFarland, d'p'y clerk."

Minutes of Court.

On Monday, the first day of June, 1885, the following entry was made upon the minutes of the court in this case, Minute Book "A," page 436, viz:

Minutes.

"Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

Exceptions and pleas of estoppel & *res adjudicata* filed with leave of court."

Exceptions & Plea of Estoppel & Res Adjudicata.

STATE OF LOUISIANA,
Parish of Madison.

8th Judicial District Court.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

Now comes D. Mayer, made defendant in the above styled & numbered cause, and, without answering and appearing herein solely for the purposes of this exception and plea of estoppel, excepts & shows that plaintiff herein is estopped by her own acts & declarations & by her laches from now urging the nullity of the judgments complained of or either or any of them, & that said judgments have now, each and all of them, the force and effect of the thing adjudged and cannot now be attacked or enjoined by plaintiff herein upon any
11 of the grounds set forth in her petition; shows that of the twenty-four suits referred to in plaintiff's petition the first, to wit, suit No. 607, styled D. Mayer *vs.* Wm. Talliaferro & Mrs. S. E. Marshall, was regularly tried by consent of parties, after answer filed by both defendants & after being fixed for trial the 20th January, 1885, by your honorable court, & with the consent of all parties, on said 20th, 21st, & 22nd January, 1885; that the evidence, on the alleged falsity of which plaintiff herein bases her present action, was offered & received upon the trial of said cause on said 20th & 21st January, 1885, on behalf of the appearer, who was plaintiff therein, & evidence then offered & received on behalf of plaintiff herein, who was defendant in said cause, in opposition thereto; that there was then no pretense or averment of surprise, no application for time or for a continuance made, and no attempt to discredit or impeach appearer's witnesses, but, on the contrary, said trial was proceeded with to judgment without objection & judgment rendered & signed by your honorable court in said cause in appearer's favor on said 22nd January, 1885, several months prior to the trial of the remaining twenty-three suits referred to in the petition of plaintiff herein; that no motion for a new trial was filed in said suit 607, but, on the contrary, plaintiff herein moved for and obtained an order of
12 appeal from said judgment returnable to the honorable the court of appeals for the 2nd circuit of your said State, being the court having jurisdiction of said cause on appeal, on the fourth Monday of March, 1885; that said appeal was regularly prosecuted; that there was even then no pretense or averment that there was in the record any false evidence or forged documents which plaintiff herein had from any cause been prevented from meeting in the lower court; but, on the contrary, plaintiff herein there contended that the preponderance of evidence was in her favor, and in her briefs on file and in the argument of her counsel urged the importance of

the decision to be rendered by the appellate court in said cause on the ground that said cause had by agreement been made a test case and would decide the twenty-three similar cases referred to in plaintiff's petition herein; shows that the opinion & decree of said court of appeals in said cause was in favor of appearer & was rendered & signed on the 25th day of March, 1885, & that no application for a rehearing was filed therein.

Shows that at the April, 1885, term of your honorable court the remaining twenty-three suits referred to in plaintiff's petition herein were fixed for trial by the court with the consent of all parties & taken up and tried without objection, each in its order;
13 that issue was joined by answers filed between all parties to each & all said causes prior to the trial of said cause No. 607, & that plaintiff herein was represented by counsel present and acting for her during & throughout the trial of each & all said causes; that on the trial of said twenty-three suits at the April, 1885, term of your honorable court, although several months had then elapsed since the evidence—now alleged to be false or forged—was introduced on the trial of said cause 607, & there was then nothing to prevent plaintiff herein, who had of necessity been made aware of said grounds set forth in her petition, if any such there were or are, by the introduction of the evidence in said cause 607 on said 21st January, 1885, from urging as matter of defence in each & all said causes the grounds, if any such there be, on which she now bases this her present action of nullity & injunction, there was no effort made to impeach said evidence, but, on the contrary, said suits were regularly taken up & tried, without objection, each in its order, & judgments regularly rendered & signed by your honorable court, after due trial had in each & all said causes, at said April, 1885, term of your honorable court; shows that no motion for a new trial was filed in any of said cases & no appeal asked for in said cases
14 or any of them; shows that the same issues raised in this suit & the grounds relied upon by plaintiff herein were all raised, met, & passed upon & final judgment rendered thereon between the same parties in said twenty-four suits referred to in plaintiff's petition herein and cannot be again raised or enquired into; shows that the sole and only object of this suit & injunction is to delay the collection of a just debt. Wherefore appearer prays that this his exception & plea of estoppel & of *res adjudicata* be sustained & plaintiff's injunction dissolved & her suit dismissed, and that said Mrs. S. E. Marshall & Abna W. Crandell, of your said parish, the surety upon her injunction bond herein, be condemned *in solido* to pay to appearer twenty per cent. on the amount enjoined as general damages for the wrongful, vexatious, & oppressive obtaining & use of the writ of injunction herein, & ten per cent. additional upon the amount enjoined as special damages for attorneys' fees paid by appearer herein, & all costs.

JNO. B. STONE,
Attorney for D. Mayer.

(Endorsed:) "No. 645. 8th district court. Mrs. S. E. Marshall

vs. H. B. Holmes, sheriff, *et al.* Ex. & plea of estoppel & *res adjudicata.* Filed June 1, 1885. F. M. Dawson, clerk."

15 *Minutes of Court.*

On Thursday, June 4th, 1885, the following entry was made upon the minutes of the — in this case in Minute Book "A," page 450, viz:

Minutes.

"Mrs. Sarah E. Marshall
vs.
H. B. Holmes, Sheriff, *et al.* } No. 645.

Motion for new commission filed on part of plaintiff. Petition and bond for removal filed by plaintiff."

Motion for New Commission.

8th District Court, Parish of Madison.

Mrs. Sarah E. Marshall
vs.
H. B. Holmes, Sheriff, *et al.* } No. 645.

To the honl. the judge of said court:

The plaintiff respectfully shows that interrogatories have been heretofore filed and applications for commissions to take the testimony of plaintiff and S. Duncan Marshall, then temporarily residing in the State of Mississippi, and directed to a commissioner in the said State of Mississippi, and of Bessie Boyd, residing in the city of New Orleans.

That owing to the absence of David Mayer, the principal defendant, from the State, and the absence of counsel of record, no satisfactory services have been made and the return day has expired; that since the filing of said interrogatories plaintiff and S. Duncan Marshall have returned to their home at Bartow P. O., Westchester Co., New York.

16 Wherefore the plaintiff prays that a new service of the interrogatories be made on the counsel of record for said David Mayer, and that a new commission to William Le Count, of New Rochelle, Westchester county, New York, constituting and appointing him a special commissioner of this honl. court for said purpose, and commanding him to take the testimony of Mrs. S. E. Marshall and S. Duncan Marshall according to law and to make due return thereof to this honl. court on or before the first Monday of November next; and that a new commission issue to any judge or justice of the peace or notary public of the parish of Orleans, commanding him to take the testimony of said Bessie Boyd according to law and to make due return thereof to this honl. court on or before the

first Monday of November next; and for general relief in the premises.

WADE R. YOUNG, *Of Counsel.*

Before me, the undersigned authority, personally came and appeared Wade R. Young, who, being duly sworn, deposes and says that he is one of the att'ys for the petitioner, and that all the facts stated and allegations made in the foregoing application are true and correct.

WADE R. YOUNG.

Sworn to and subscribed before me June 4th, 1885, in open court.

F. M. DAWSON,
Clerk 8th District Court.

(*Sheriff's Return.*)

"Served a certified copy of the within motion for commis-
17 sion on D. Mayer by handing same to Jno. B. Stone, Esq., att'y of record, in person, this 23rd day of June, 1885.
Service, $2.00.

F. W. BRISCOE, *D'p'y Sh'ff.*"

(Endorsed:) "No. 645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sheriff, *et al.* Motion for new commission. Filed June 4th, 1885. F. M. Dawson, clerk."

Petition and Bond for Removal.

8th District Court, Parish of Madison.

Mrs. SARAH E. MARSHALL } *vs.* H. B. HOLMES, Sheriff, *et al.* } No. 645.

To the honl. the judge of said court:

The plaintiff respectfully shows that she filed in this honl. court an original bill against the defendant, David Mayer, to annul certain judgments at law obtained by the said Mayer against this plaintiff, which are fully described in her said bill, and to restrain the said Mayer and the said H. B. Holmes, sheriff of your said parish, from executing or attempting to execute said judgments *pendente lite*, for the reason that they were obtained by false testimony and forged documents, and that it would be against equity and good conscience to permit such judgments to be executed; that the said defendants have entered an appearance in said suit by pleas filed; that this plaintiff is a citizen of the State of New York
18 and the defendants citizens, D. Mayer of the State of Mississippi and H. B. Holmes of the State of Louisiana; that the controversy is wholly between citizens of different States and can be fully tried and determined between them, and that your petitioner desires to avail herself of the provisions of the act of Congress for

vs. H. B. Holmes, sheriff, *et al.* Ex. & plea of estoppel & *res adjudicata.* Filed June 1, 1885. F. M. Dawson, clerk."

15 *Minutes of Court.*

On Thursday, June 4th, 1885, the following entry was made upon the minutes of the — in this case in Minute Book "A," page 450, viz:

Minutes.

"Mrs. Sarah E. Marshall
vs.
H. B. Holmes, Sheriff, *et al.* } No. 645.

Motion for new commission filed on part of plaintiff. Petition and bond for removal filed by plaintiff."

Motion for New Commission.

8th District Court, Parish of Madison.

Mrs. Sarah E. Marshall
vs.
H. B. Holmes, Sheriff, *et al.* } No. 645.

To the honl. the judge of said court:

The plaintiff respectfully shows that interrogatories have been heretofore filed and applications for commissions to take the testimony of plaintiff and S. Duncan Marshall, then temporarily residing in the State of Mississippi, and directed to a commissioner in the said State of Mississippi, and of Bessie Boyd, residing in the city of New Orleans.

That owing to the absence of David Mayer, the principal defendant, from the State, and the absence of counsel of record, no satisfactory services have been made and the return day has expired; that since the filing of said interrogatories plaintiff and S. Duncan Marshall have returned to their home at Bartow P. O., Westchester Co., New York.

16 Wherefore the plaintiff prays that a new service of the interrogatories be made on the counsel of record for said David Mayer, and that a new commission to William Le Count, of New Rochelle, Westchester county, New York, constituting and appointing him a special commissioner of this honl. court for said purpose, and commanding him to take the testimony of Mrs. S. E. Marshall and S. Duncan Marshall according to law and to make due return thereof to this honl. court on or before the first Monday of November next; and that a new commission issue to any judge or justice of the peace or notary public of the parish of Orleans, commanding him to take the testimony of said Bessie Boyd according to law and to make due return thereof to this honl. court on or before the

first Monday of November next; and for general relief in the premises.

WADE R. YOUNG, *Of Counsel.*

Before me, the undersigned authority, personally came and appeared Wade R. Young, who, being duly sworn, deposes and says that he is one of the att'ys for the petitioner, and that all the facts stated and allegations made in the foregoing application are true and correct.

WADE R. YOUNG.

Sworn to and subscribed before me June 4th, 1885, in open court.

F. M. DAWSON,
Clerk 8th District Court.

(*Sheriff's Return.*)

"Served a certified copy of the within motion for commis-
17 sion on D. Mayer by handing same to Jno. B. Stone, Esq., att'y of record, in person, this 23rd day of June, 1885.
Service, $2.00.

F. W. BRISCOE, *D'p'y Sh'ff.*"

(Endorsed:). "No. 645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sheriff, *et al.* Motion for new commission. Filed June 4th, 1885. F. M. Dawson, clerk."

Petition and Bond for Removal.

8th District Court, Parish of Madison.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

To the honl. the judge of said court:

The plaintiff respectfully shows that she filed in this honl. court an original bill against the defendant, David Mayer, to annul certain judgments at law obtained by the said Mayer against this plaintiff, which are fully described in her said bill, and to restrain the said Mayer and the said H. B. Holmes, sheriff of your said parish, from executing or attempting to execute said judgments *pendente lite*, for the reason that they were obtained by false testimony and forged documents, and that it would be against equity and good conscience to permit such judgments to be executed; that the said defendants have entered an appearance in said suit by pleas filed; that this plaintiff is a citizen of the State of New York
18 and the defendants citizens, D. Mayer of the State of Mississippi and H. B. Holmes of the State of Louisiana; that the controversy is wholly between citizens of different States and can be fully tried and determined between them, and that your petitioner desires to avail herself of the provisions of the act of Congress for

such cases made and provided, and to remove said cause into the circuit court of the United States for the western district of Louisiana; wherefore, the premises considered, she files herewith her petition and bond conditioned according to law, and prays that they be accepted and no further proceedings had in said cause in this honl. court.

WALTON FARRAR,
WADE R. YOUNG,
Of Counsel.

Bond.

8th Dist. Court, Parish of Madison.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

Know all men by these presents that we, Mrs. Sarah E. Marshall, as principal, and —— ——, as her security, are held and firmly bound unto D. Mayer and H. B. Holmes, sheriff, in the full sum of $500.00, five hundred dollars; for the payment of which, well and truly to be made, we bind ourselves, our administrators and heirs, firmly by these presents.

The condition of the above obligation is such that whereas 19 the above-bound principal, as plaintiff in the above entitled and numbered suit, has filed her petition and bond to remove said suit into the circuit court of the United States for the western district of Louisiana: Now, therefore, if she shall file in said court on the first day of its then next session a true copy of the record in said suit, and shall well and truly pay all the costs of said suit in said court if said court shall hold that such suit was wrongfully and improperly removed, then and in that case this bond to be null and void; otherwise to remain of full force and effect.

MRS. S. E. MARSHALL,
By WALTON FARRAR, *Att'y.*
A. W. CRANDELL.

(Endorsed:) "No. 645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sheriff, *et al.* Petition and bond for removal. Filed June 4th, 1885. F. M. Dawson, clerk."

Minutes of the Court.

On the 5th day of June, 1885, the following entry was made upon the minutes of the court in Minute Book "A," page 451, viz:

Minutes.

"Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

The motion for removal taken up for trial, and, after due trial, removal was refused by the court.

20 Motion to refer pleas and exceptions to the merits filed by plaintiff.

Motion taken up for trial, tried, and sustained, and exceptions referred to the merits.

Motion to Refer Pleas and Exceptions to Merits.

8th District Court, Parish of Madison.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

To the honl. the judge of said court:

The plaintiff respectfully moves that the pleas filed by the defendants and termed exceptions, being pleas in bar going to the merits and necessitating the taking of testimony, be referred to the merits and ordered to stand as an answer, with leave to answer over if desired.

WALTON FARRAR,
WADE R. YOUNG,
Of Counsel.

(Endorsed:) "No. 645. Mrs. Sarah E. Marshall *vs.* H. B. Holmes, sheriff, *et al.* Motion to refer pleas & exceptions to merits. Filed June 5th, 1885. F. M. Dawson, clerk."

Minutes of Court.

On Saturday, June 20th, 1885, the following entry was made upon the minutes of the court on Minute Book "A," page 473, viz:

Minutes.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

Answer of D. Mayer filed.
Answer of H. B. Holmes, sheriff, filed.

21 *Answer of D. Mayer.*

8th Dist. Court, Parish of Madison, State of Louisiana.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

Now comes the defendant, David Mayer, by his undersigned counsel, and reiterating the exception, pleas of estoppel & *res adjudicata* heretofore filed, and further excepting that pl'ff's petition

discloses no cause of action, for answer to plaintiff's demand denies each and every allegation therein contained except as admitted in said plea of *se*toppel & *res adjudicata*, and will require strict and legal proof of the same.

Wherefore he prays that said demand be rejected; that respondent may have judgment against said pl'ff and the surety on the injunction bond as prayed for in his said plea.

Finally for costs and full and general relief, &c.

JNO. B. STONE & A. L. SLACK, *Att'ys.*

(Endorsed:) "No. 645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sh'ff, *et als.* Answer of D. Mayer. Filed June 20th, 1885. F. M. Dawson, clerk."

Answer of H. B. Holmes, Sheriff.

8th Dist. Court, Parish of Madison, State of Louisiana.

Mrs. S. E. Marshall
vs.
H. B. Holmes, Sh'ff, *et al.* } No. 645.

22 Now comes Henry B. Holmes, sheriff, made defendant in said above cause, and avers that he has no interest in this litigation. He, for answer, denies each & every allegation in pl'ff's petition and prays to be hence dismissed with costs and for full & general relief, &c.

J. B. STONE & A. L. SLACK, *Att'ys.*

(Endorsed:) "645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sh'ff, *et als.* Answer of H. B. Holmes, sheriff. Filed June 20th, 1885. F. M. Dawson, clerk."

Minutes of Court.

On Thursday, November 5th, 1885, the following entry was made upon the minutes of the court in Minute Book "A," page 479, viz:

Minutes.

"Mrs. Sarah E. Marshall
vs.
H. B. Holmes, Sheriff, *et al's.* } No. 645.

Case fixed by consent for Wednesday, 11th instant."

And on Wednesday, November 11th, 1885, the following entry was made upon the minutes of the court in Minute Book "A," page 488, viz:

Minutes.

"Mrs. SARAH E. MARSHALL
vs
H. B. HOLMES, Sheriff, *et als.* } No. 645.

Motion for continuance filed by plaintiff with leave of the court."

Motion for Continuance.

State of Louisiana, Parish of Madison, 8th Dist. Court.

Mrs. S. E. MARSHALL
vs.
H. B. HOLMES, Sh'ff, *et als.* } 645.

23 Now comes Mrs. S. E. Marshall, plaintiff in above-styled cause, and moves this honl. court to grant her a continuance for the reasons hereinafter set out. She shows that Wade R. Young, Esq., was and is employed as principal counsel in this cause; that the same was set down and fixed for hearing on the understanding that the said Young would be present on the day fixed by the court, and that no consent to the fixing or trial of said cause would have been made without said understanding; that from some cause unknown to petitioner said Young has not arrived and is not now present; that she has used due and reasonable diligence to secure the presence of said Young and to learn his whereabouts, but so far without avail. She avers that she cannot safely go to trial without the presence of said Young, who has been entrusted with the management and control of said cause from the date of its institution and has managed and controlled and directed said cause from said time; that to force petitioner to a trial at this time without the presence of said Young would operate a great hardship upon her; that this application and motion is made not to retard said suit or for the purposes of delay, but that the ends of justice may be best subserved. Wherefore she prays that said cause may be continued, and for general relief.

WALTON FARRAR,
Att'y for Pet'r.

24 Walton Farrar, being duly sworn, deposes and says that, to the best of his knowledge and belief, Mrs. S. E. Marshall, pl'ff in above-styled cause, is now absent from the parish of Madison & State of Louisiana; that the allegations of the foregoing motion are true and correct; that Wade R. Young, Esq., is now absent from attendance upon this court; that affiant, as associate counsel with said Young, is unwilling to go into trial of said cause without the presence of said Young, who has been entrusted with the entire management and control of said cause; that affiant has sought to find the whereabouts of said Young, but has been unable to do so, and that affiant consented to the fixing of said cause on the under-

standing and with the confident belief that said Young would be present on the day so fixed. Affiant further swears that he has sought to find out the whereabouts of said Young and to have his presence before the court that the cause may be proceeded with.

WALTON FARRAR.

Sworn to and subscribed before me this 11th day of Nov., 1885.

F. M. DAWSON,
Clerk 8th District Court.

(Endorsed:) "645. 8th dist. court. Mrs. S. E. Marshall *vs.* H. B. Holmes, sh'ff, *et als.* Motion for continuance. Filed Nov'r 11th, 1885. F. M. Dawson, clerk."

Minutes of Court.

On Thursday, November 12th, 1885, the following entry was made upon the minutes of the court in Minute Book "A," page 489, viz:

25 *Minutes.*

"Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

Traverse of motion for continuance filed on part of defendants."

Traverse of Motion for Continuance.

8th Dist. Court, Parish of Madison, State of Louisiana.

Mrs. S. E. MARSHALL
vs.
H. B. HOLMES, Sh'ff, *et als.* } 645.

The defendant, David Mayer, by his undersigned counsel, traverses the allegations made by the pl'ff for a continuance in the above-entitled cause, in this; that said pl'ff alleges that said cause "was set down and fixed for hearing on the understanding that the said Young would be present on the day fixed by the court, and that no consent to the fixing or trial of said cause would have been made without said understanding." Now defendant avers that there was no understanding had with his attorneys as to the fixing of said cause. He avers that the correct facts are that the court was calling the docket for the trial or fixing of cases, and that when this case was reached Walton Farrar, Esq., att'y for pl'ff, stated to the court that Col. Young, his associate, would be out on Wednesday, and asked this court to fix the said cause for said day, which the
26 court, on his motion, did, fixing same for Wednesday, 11th Nov'r, '85; that def't made no objection to said fixing, but he specially denies that his (def't's) att'ys consented to postpone the the case, or that there was any understanding as to its non-trial in

case of absence of said Wade R. Young, Esq. Def't therefore prays that said motion be overruled and the cause proceeded with according to law.

JNO. B. STONE & A. L. SLACK, *Att'ys.*

(Endorsed:) "645. Marshall *vs.* Holmes, sh'ff, *et al.* Traverse of the motion for continuance by def'ts. Filed Nov'r 12, 1885. F. M. Dawson, clerk."

Minutes of Court.

On Thursday, November 12th, 1885, the following entry was made upon the minutes of the court in Minute Book "A," page 490, viz:

Minutes.

"Mrs. SARAH E. MARSHALL *vs.* H. B. HOLMES, Sh'ff, *et al.* } No. 645.

Motion for continuance taken up for trial, tried, and case continued."

Application for Rule to Produce.

8th District Court, Parish of Madison, State of Louisiana.

Mrs. S. E. MARSHALL *vs.* H. B. HOLMES, Sh'ff, *et als.* } 645.

To the honorable the judge of said court:

27 The plaintiff respectfully shows that the defendant, David Mayer, in his testimony on the trial of the causes numbered from 595 to 618, inclusively, and which causes this action is brought to nullify and avoid, pretended to have had at the time in his possession two certain letters—one of date Jan'y 15th to 20th, 1884, from plaintiff to Elijah Boyd, and one of date —, from said Duncan Marshall, to said Elijah Boyd—which letters the said defendant swore were at that time lost or mislaid and not to be found, and which he pretended—by parol testimony of the contents—to contain authority to said Boyd from plaintiff to contract with said Mayer to furnish mules and necessary supplies to the tenants on the Cabin Teele plantation for the year 1884, and to bind plaintiff for the supplies so furnished or to waive her lien as lessor in favor of said Mayer or other furnisher of supplies.

Your petitioner shows that she has denied and now denies the execution of any mandate or the writing of any such letter to the said Boyd, as testified to by said Mayer, and charges that said testimony of said Mayer was false, or that if such pretended letters existed they were forged and not the genuine letters of this plaintiff

or S. Duncan Marshall, and that if such letters ever had any
28 existence in fact it is necessary and material to the trial of this cause to have them produced in order that their falsity may be judicially determined, and she expects to prove by the production of such letters, if they have any real existence, that they are false and fraudulent and forged and not the true and genuine letters of this petitioner or of said S. Duncan Marshall, and that the testimony of said Mayer as to the contents of said letters was false; wherefore she prays that said David Mayer be ruled to — said pretended letters on Monday, January 1st, 1886, or show cause to the contrary.

WADE R. YOUNG &
WALTON FARRAR,
Att'ys for Pet'r.

Before me, the undersigned authority, personally appeared Walton Farrar, who, being duly sworn, deposes and says he is one of the att'ys for the plaintiff in above-styled cause; that said plaintiff is now absent from the State of Louisiana, & that all the facts and allegations of the foregoing petition are true and correct to the best of his knowledge and belief.

WALTON FARRAR.

Sworn to and subscribed before me this 22nd Dec'r, 1885.
[L. S.] F. M. DAWSON,
Clerk 8th District Court.

The foregoing petition and affidavit considered, it is ordered that the defendant, David Mayer, produce on or before Mon-
29 day, January 4th, 1886, the letters and documents called for by plaintiff or show cause why he fails to do so.

Done and signed at chambers this 2nd day of Jan'y, A. D. 1886.
E. J. DELONY,
Judge 8th Judicial District.

(Endorsed:) "No. 645. 8th district court, parish of Madison, La. Mrs. Sarah E. Marshall *vs.* H. B. Holmes, sh'ff, *et als.* Application for rule, affidavit, & order. Filed January 4th, 1886. F. M. Dawson, clerk."

Minutes of Court.

On Monday, January 11th, 1886, the following entry was made upon the minutes of the court in Minute Book "A," page 192, viz:

Minutes.

"Mrs. Sarah E. Marshall
vs. } No. 645.
H. B. Holmes, Sheriff, *et al.*

Answer of D. Mayer to motion to produce filed."

Answer of D. Mayer to Rule to Produce.

8th District Court, Parish of Madison, State of Louisiana.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES *et als.*

Now comes David Mayer, defendant in said above-entitled cause, and for answer to the motion to produce served on his attorneys, under oath says that he cannot produce the documents called for for the reason, as stated in his original testimony, that they
30 are either lost or mislaid and he has not been able to find the same then or since; wherefore he prays to be hence dismissed.

D. MAYER.

Sworn to & subscribed before me this 7th Jan'ry, 1886.

L. M. LOEWENBERG,
[L. S.] *Commissioner for Louisiana.*

(Endorsed:) "645. Mrs. S. E. Marshall *vs.* H. B. Holmes *et al.* Answer of D. Mayer to motion to produce. Filed January 11th, 1886. F. M. Dawson, clerk."

Minutes of Court.

On Monday, April 5th, 1886, the following entry was made upon the minutes of the court, Minute Book "A," page 497, viz:

Minutes.

"Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

In this case there was filed on part of defendants a motion for rule on plaintiff to furnish solvent surety on her injunction bond. This case, being called, was fixed for Wednesday next (7th inst.)."

Motion for Rule for Solvent Surety.

8th Jud'l Dist. Court, Parish of Madison, State of Louisiana.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sh'ff, *et als.* } No. 645.

Now come the defendants in said above styled and num-
31 bered cause and with respect show that since the last term of this hon. court, Abner W. Crandell, the surety on the in-

junction bond given by pl'ff in this cause for $2,000.00, staying the execution of the writs herein enjoined, has become and is now hopelessly insolvent, having no property over and above his liabilities & exemptions susceptible of seizure or liable for the payment of his debts. The defendants are therefore left unprotected in the event this injunction is dissolved, and they are entitled to require new and solvent surety; otherwise the pl'ff will have the benefit of an injunction, and that without any protection to your appearers; wherefore, the premises considered, defendants pray for a rule on the said pl'ff herein to show cause why she should not give additional & solvent surety on her said bond, and in the event of her refusal that her said injunction in so far as staying the execution of said writs enjoined be set aside and vacated; that this rule be duly served and the pl'ff required to answer on the day fixed by the court, & for all necessary orders, &c.

STONE & MURPHY,
A. L. SLACK, *Of Counsel.*

(Endorsed:) "No. 645. 8th d't court, Madison. Mrs. S.
32 E. Marshall *vs.* H. B. Holmes, sh'ff, *et als.* Motion for rule on pl'ff to furnish solvent surety on her inj'n bond, &c. Filed April 5, 1886. F. M. Dawson, clerk."

Minutes of Court.

On Wednesday, April 7th, 1886, the following entry was made upon the minutes of the court in Minute Book "A," page 503, viz:

Minutes.

"Mrs. Sarah E. Marshall
vs.
H. B. Holmes, Sheriff, *et als.* } No. 645.

In this case plaintiff filed motion for rule on defendants to show cause why certain depositions should not be read in evidence. Rule granted, returnable on or before the trial of this case."

Motion for Rule to Admit Testimony.

8th Dis't Court, Parish of Madison.

Mrs. S. E. Marshall
vs.
H. B. Holmes, Sheriff, *et als.*

The plaintiff respectfully prays for a rule on the defendants to show cause, if any they have, why the testimony of herself, of S. Duncan Marshall, of James Parker, of Mrs. Bessie Boyd, and of the several other witnesses whose evidence has been taken for the plaintiff, in pursuance of commissions issued out of this honl. court,

should not be admitted and used as evidence on the trial of the cause.

WALTON FARRAR,
WADE R. YOUNG,
Of Counsel.

33 *Answer to Rule to Admit Testimony.*

The def'ts accept service of rule & for answer to the same deny that Wm. Le Count, who executed the commissions directed to him, was not at said time any officer authorized to take depositions, nor was he a special commissioner under any order of this court; further, that there is no order of this court authorizing the taking of any depositions of any of the witnesses in this case, nor any affidavit as to the materiality of said testimony.

Wherefore they pray that said depositions, for the above reasons and the reasons heretofore stated as objections on the applications therefor, be rejected, &c.

A. L. SLACK, *Att'y.*

(Endorsed:) "No 645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* Rule to admit testimony. Filed April 7, 1886. F. M. Dawson, clerk."

Minutes of Court.

On Wednesday, April 7th, 1886, the following entries were made upon the minutes of the court, Minute Book "A," page 505, viz:

Minutes.

"Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

The rule taken on pl'ff to furnish solvent surety on injunction bond is made absolute and plaintiff required to furnish solvent surety within ten days, otherwise the injunction be set aside.

34 Answer to rule to show cause why depositions should not be read in evidence filed. Rule taken up, tried, and made absolute. The case was then taken up for trial. After due trial there was judgment in favor of defendants. (See decree.)

Bill of exceptions filed on part of defendants."

Answer to Rule to Show Cause.

(For this answer to rule see page 33 of this transcript, having been written at foot of motion for rule and copied with it.)

Bill of Exceptions.

(This document omitted as not utilized or made operative.)

Judgment.

8th Judicial District Court, Parish of Madison, State of Louisiana.
April Term, 1886.

Mrs. S. E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

This cause coming on to be heard on all the issues and pleas presented, after due issue joined and the same being duly set for trial and regularly taken up and tried, and by reason thereof and by further reason of the law and the evidence being in favor of the defendants and against the plaintiff, Mrs. Sarah E. Marshall, it is
ordered, adjudged, and decreed that the injunction sued out
35 by said plaintiff be dissolved, and that the defendant David
Mayer be authorized to execute the judgments enjoined; and it is further ordered, adjudged, and decreed that David Mayer, defendant, do have judgment and recover of said plaintiff and the sureties on her injunction bond, to wit, A. W. Crandell and Hugh R. Lucas, *in solido*, the sum of ten per cent. on the amount enjoined as special damages as attorneys' fees, and the further sum of twenty per cent. on said amounts enjoined as general damages, and all costs of this suit.

Done, read, & signed in open court this 24th day of April, A. D. 1886.

E. J. DELONY,
Judge 8th Judicial District.

(Endorsed:) "No. 645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* Judgment. Filed April 24th, 1886. F. M. Dawson, clerk."

Minutes of Court. (*Order of Appeal.*)

On Wednesday, April 7, 1886, the following entry was made upon the minutes of the court, Minute Book "A," page 505, viz:

"Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645. Minute. Order of Appeal.

On motion of counsel for plaintiff, made in open court and in presence of counsel for defendants, it is ordered that appeals, suspensive and devolutive, be granted plaintiff, returnable to
36 the supreme court of Louisiana, sitting in New Orleans, La.,
on the 2nd Monday in February next (1887), upon her furnishing bond, conditioned according to law, for a suspensive appeal in the sum of thirty-five hundred dollars, and for a devolutive appeal in the sum of one hundred dollars, with good and solvent security."

And on Thursday, the 8th day of April, 1886, the following entry was made upon the minutes of the court in Minute Book "A," page 506, viz:

Minutes. Reducing Bond.

"Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

Motion filed by plaintiff to reduce amount of suspensive appeal bond; and it is ordered that the suspensive appeal bond be fixed at ($1,500.00) fifteen hundred dollars."

Motion to Reduce Appeal Bond.

8th District Court, Parish of Madison.

Mrs. S. E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.*

The plaintiff respectfully shows that the amount fixed by the court for a suspensive appeal from the judgment dissolving the injunction, with damages, in this suit is excessive, and that a bond for one-half over and above the amount of the judgment for damages is sufficient by the laws and jurisprudence of the State.

37 Wherefore she prays that the sum of $3,500.00, fixed by the court, be reduced, and that she be permitted a suspensive appeal from the judgment on giving bond in a sum one-half over and above the amount of the judgment for damages.

WALTON FARRAR,
WADE R. YOUNG,
Of Counsel.

(Endorsed:) "645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* Motion to reduce bond. Filed April 8th, 1886. F. M. Dawson, clerk."

Minutes of Court.

On Thursday, April 15th, 1886, the following entry was made upon the minutes of the court in Minute Book "A," page 511, viz:

Minutes.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

It is ordered in this case that Hugh R. Lucas be accepted as additional security, in accordance with the rule heretofore taken in this case; and H. R. Lucas appeared in open court and signed the bond as security thereto.

Application for Appointment of Curator ad Hoc.

8th Dist. Court, Parish of Madison, State of Louisiana.

Mrs. S. E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

38 To the honl. judge of said court:

Now comes David Mayer, defendant in said above-entitled cause, and represents that he is desirous of executing the judgment in said cause, but that the plaintiff resides out of the State, and also her att'ys. He represents that it is necessary to make legal demand on said plaintiff, Mrs. Marshall, and for that purpose a *curator ad hoc* should be appointed to represent her, contradictorily with whom the judgment and writ of *fi. fa.* may be executed and all necessary proceedings conducted; finally, for all necessary orders & full & general relief, &c.

STONE & MURPHY,
A. L. SLACK, *Of Counsel.*

A. L. Slack, counsel for applicant, being sworn, says that the judge of 8th dist. is absent from the parish of Madison.

A. L. SLACK.

Sworn to & subscribed before me 28th June, 1886,

[L. S.] F. M. DAWSON,
Clerk 8th District Court.

Order.

The within application and affidavit being considered, it is ordered that Sam'l James, Esq., be appointed *curator ad hoc* to represent Mrs. S. E. Marshall, as above prayed for.

Done & signed in office 28 June, 1886.

[L. S.] F. M. DAWSON,
Clerk 8th District Court.

39 I accept the above appointment this 28th June, '86.

SAM. JAMES.

(Endorsed:) # 645. Mrs. S. E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* Application for appointment of *cur. ad hoc.* Filed July 13th, 1886. W. H. McFarland, d'p'y clerk.

Appeal Bond.

STATE OF LOUISIANA, }
Parish of Madison. }

Eighth District Court.

Mrs. SARAH E. MARSHALL }
vs. } No. 645.
H. B. HOLMES, Sheriff, *et al.* }

Know all men by these presents that Mistress Sarah E. Marshall, as principal, and Friend L. Maxwell, as security, are held and firmly bound unto F. M. Dawson, clerk of the eighth district court in and for said parish and State, and his successors in office, in the just and full sum of one hundred dollars; in which sum, well and truly to be paid, we hereby bind ourselves, our heirs, administrators, and assigns, firmly by these presents, this 23rd day of November, A. D. 1886. The condition of the above obligation is such that whereas a final judgment was rendered in the above-entitled suit in favor of the said H. B. Holmes, sheriff, and D. Mayer and gainst the said Sarah E. Marshall, from which judgment so rendered the said
40 Sarah E. Marshall has taken a devolutive appeal to the supreme court of Louisiana, returnable on the second Monday of February, A. D. 1887, unto said court, setting in the city of New Orleans, La.:

Now, if the said Sarah E. Marshall shall prosecute her said appeal and shall satisfy such judgment as may be rendered against her, or if the same shall be satisfied by the proceeds of the sale of her estate, real or personal, if she be cast in said appeal, then this obligation to become null and void; otherwise to be and remain in full force and effect, and said surety shall be liable in *his* place.

F. L. MAXWELL.

Witnesses:

____ ____.
____ ____.

(Endorsed:) "No. 645. Eighth district court. Appeal bond. Filed November 23rd, 1886. F. M. Dawson, clerk."

Mandate of Supreme Court.

Supreme Court of the State of Louisiana.

Mrs. SARAH E. MARSHALL }
vs. } No. 9929.
H. B. HOLMES, Sheriff, *et al.* }

CLERK'S OFFICE, NEW ORLEANS, *March 7th*, 1887.

Appeal from the eighth judicial district court, parish of Madison.

41 Mr. Justice Poche pronounced the opinion and decree of the court in the words and figures following, to wit:

Plaintiff, owner of a plantation, was made a codefendant with twenty-four of her tenants in twenty-four separate suits instituted by D. Mayer for the recovery of various sums of money due him by the tenants respectively on account of advances made to them in working animals and general plantation supplies, and for the enforcement against Mrs. Marshall of an alleged obligation on her part to deliver to Mayer a sufficient quantity of cotton to satisfy the amount due by each of her aforesaid tenants. In one of the suits, entitled D. Mayer *vs.* William Talliaferro, the following agreement was entered into by counsel of both parties:

"In this case it is agreed between plaintiff and defendant, through their counsel, that this shall be test case of all the cases numbered from 595 to 618, inclusive of both, and the final decision of this case shall be decisive of all the issues involved in said cases of like character as those in the case being tried, and at the April term of the district court judgment by said court shall be rendered upon the issues as decided and passed upon in this case in the appellate court."

From a judgment against her in the district court Mrs. Marshall took an appeal to the court of appeals, where the judgment
42 was amended in some particulars and otherwise affirmed; whereupon the district court entered a judgment in conformity with the conclusions of the court of appeals in each of the twenty-three other suits embraced in the agreement of counsel hereinabove referred to. Mrs Marshall then had recourse to the present suit, by means of which she seeks to enjoin the execution and to obtain a decree declaring the nullity of the twenty-four judgments rendered as aboye set forth. She prosecutes this appeal before us from a judgment of the district court rejecting her demand and dismissing her action, with damages for twenty per cent. on the amount of each of the judgments aforesaid. The point made by appellee's counsel, to the effect that this court has no jurisdiction *ratione materiæ*, is well taken, and hence must be sustained.

The highest amount involved in any one of the twenty-four suits is $361.20. Hence it is clear that not one of the judgments could by itself have been appealed to this court.

This is conceded, in fact, by appellant herself by taking her first appeal from the judgment in the Talliaferro case, which she brought to the court of appeals, although under the agreement of her counsel the final judgment rendered there was practically a de-
43 cision of the twenty-three other cases. Can she now vest jurisdiction in this court in an action of nullity by cumulating twenty-four judgments in one petition? The question is answered in the negative by the very nature of things as well as by our jurisprudence. A similar attempt was made in the case of Prevost & Wife *vs.* Gregg *et al.*, 5 U. S., p. 87. It was disposed of in the following manner: "It appears that each of these judgments was given for an amount less than that of which this court can take cognizance. The attempt, therefore, made by this mode of proceeding to obtain a review of these judgments and to have their nullity established is an attempt to have that done indirectly which the law

will not permit to be done directly. We are of the opinion that we cannot in this way take cognizance of cases of which the Constitution and the law have denied us jurisdiction." The same doctrine was enforced in the case of The United States *vs.* Cocheran *et al.*, 5 Rob., 120, in which the court said: "This court on more than one occasion have decided that an appeal will not lie from a judgment rendered on one petition enjoining executions of several judgments, each for less than three hundred dollars, rendered in separate suits, although the judgments added together amount to more than three hundred dollars." See also Armitage *vs.* Barrow, 10 An., 78, and Stevenson *vs.* Weber, 29 A., 106.

44 Common sense and logic alike point to the rule that a cause not appealable in amount to this court for the review of the judgment rendered therein cannot be made appealable here to review the judgment rendered in actions of nullity in the same cause. In the case of Denegre *vs.* Moran, 36 A., 423, the rule was formulated in the following language: "The supreme court has no jurisdiction over a suit in nullity to annul a judgment rendered in a case in which the amount in dispute is less than $1,000. It is immaterial what the grounds of nullity be."

The action of this court in entertaining the present appeal would practically be the assumption of appellate jurisdiction of a cause which under the Constitution belongs to another appellate court, and would involve the court in an attempt to review a final judgment rendered by the proper circuit court of appeals. Under the conclusions herein announced the appellant is not deprived of her constitutional right of appeal. She is merely required to retrace her steps from the incompetent to the proper tribunal. It is therefore ordered that this appeal be hence dismissed at appellant's costs.

A true copy.
[L. S.] JOHN AUGUSTIN,
Deputy Clerk.

45 (Endorsed:) "No. 9929. Supreme court of Louisiana. Mrs. Sarah E. Marshall *vs.* W. B. Holmes, sheriff, *et al.* Eighth judicial, Madison. Certified copy of final decree and opinion. Costs, $—. Deposit, —. Balance, $—."

"No. 645. D. C. Mrs. Sarah E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* Mandate of supreme court. Rec'd by mail & filed, and decree recorded in Record of Suits "C," page 220, this 28th day of March, 1887. F. M. Dawson, clerk."

Petition for Devolutive Appeal.

8th Dist. Court, Parish of Madison.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.* } No. 645.

To the Honl. E. J. Delony, judge of said court:

The petition of Mrs. Sarah E. Marshall, a resident and citizen of

the State of New York, respectfully shows that she brought suit in your honl. court against David Mayer, a resident and citizen of the State of Mississippi, and Henry B. Holmes, sheriff of the parish of Madison, a resident and citizen of said parish and State of Louisiana, to have certain judgments rendered against her in favor of said Mayer annulled and avoided for fraud and false testimony, and to have said Mayer and said Holmes, sheriff, enjoined and re-
46 strained from executing such judgments; that a trial of said suit was had in your honl. court and a judgment rendered and signed April 24th, 1886, rejecting her demand and dissolving the injunction, with ten per cent. special damages for attorney's fees and twenty per cent. general damages; that petitioner was aggrieved by said judgment and petitioned for and obtained an order of appeal returnable to the supreme court at its February term, 1887.

That she perfected and prosecuted her said appeal, and the supreme court on March 7th, 1887, rendered judgment dismissing said appeal for want af jurisdiction, *ratione materiæ*, because no one of the judgments so sought to be annulled and so enjoined exceeded the sum of $2,000.00, two thousand dollars.

That each and all of said judgments or most of them exceed the sum of $100.00, one hundred dollars, and come within the appellate jurisdiction of the circuit court of appeals, and petitioner desires to prosecute a devolutive appeal to said honl. court, which has such jurisdiction if it be lacking in the supreme court; wherefore petitioner prays for a devolutive appeal from such judgment, returnable to the court of appeals for the 2nd circuit and parish of Madison at its next term, to be holden in said parish on the 4th Mon-
47 day and 28th day of March, 1887, upon her giving bond, conditioned according to law, for costs, and that the defendants, H. B. Holmes, by personal or domiciliary service, and David Mayer, by service on his attorney-at-law, A. L. Slack, Esq., be cited to appear and answer the appeal.

WADE R. YOUNG, *Attorney.*

STATE OF MISSISSIPPI, }
County of Warren. }

Before me, the undersigned authority, personally came and appeared Wade R. Young, who, being by me duly sworn, deposes and says that he is the attorney for the petitioner, Mrs. S. E. Marshall, and that the Honl. E. J. Delony, judge of the 8th district, is absent from the parish of Madison.

WADE R. YOUNG.

Sworn to and subscribed before me March 11th, 1887.

J. T. STROTHER,
[L. S.] *Com'r for Louisiana.*

Order of Appeal.

STATE OF LOUISIANA, }
Parish of Madison. }

Eighth District Court.

The within petition and affidavit being considered, by reason of the law it is ordered that a devolutive appeal be granted herein, returnable to the honorable court of appeals for 2nd circuit of Louisiana, sitting at Tallulah, in Madison parish, on the 4th Monday (28th day) of March, 1887, on the petitioner furnishing bond, with good security, conditioned according to law, in the sum of twenty-five dollars.

Thus done and signed, at my office, at Tallulah, Madison parish, Louisiana, this 12th day of March, A. D. 1887.

[L. S.] F. M. DAWSON,
Clerk of said Court.

48 (Endorsed:) "No. 645. 8th district court, Madison parish, La. Mrs. S. E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* Petition for devolutive appeal & order. Filed March 12th, 1887. F. M. Dawson, clerk."

Appeal Bond.

STATE OF LOUISIANA, }
Parish of Madison, }

Eighth District Court.

Mrs. SARAH E. MARSHALL }
vs. } No. 645.
H. B. HOLMES, Sh'ff, *et als.* }

Know all men by these presents that Mrs. Sarah E. Marshall, as principal, and J. G. Hawkes, as security, are held and firmly bound unto F. M. Dawson, clerk of the eighth district court in and for said parish and State, and his successors in office, in the just and full sum of twenty-five ($25.00) dollars; in which sum, well and truly to be paid, we hereby bind ourselves, our heirs, administrators, and assigns, firmly by these presents, this 11th day of March, A. D. 1887. The condition of the above obligation is such that whereas a final judgment was rendered in the above-entitled suit in favor of the said H. B. Holmes, sh'ff, and D. Mayer, defendants, & against the said Mrs. Sarah E. Marshall, plaintiff, from which judgment so rendered the said Mrs. Sarah E. Marshall has taken a devolutive appeal to the court of appeals for 2nd circuit of Louisiana, re-
49 turnable on the fourth Monday of March, A. D. 1887, unto said court, sitting in the town of Tallulah, Madison parish, La.: Now, if the said Mrs. Sarah E. Marshall shall prosecute her said appeal and shall satisfy such judgment as may be rendered

against her, or if the same shall be satisfied by the proceeds of the sale of her estate, real or personal, if she be cast in said appeal, then this obligation to become null and void; otherwise to be and remain in full force and effect *and effect*, and said surety shall be liable in *his* place.

MRS. SARAH E. MARSHALL,
By WADE R. YOUNG, *Att'y.*
J. G. HAWKES.

Witnesses:
——— ———.
——— ———.

(Endorsed:) "No. 645. Eighth district court. Appeal bond. Filed March 12th, 1887. F. M. Dawson, clerk."

Petition for Appeal & Order.

The Honl. E. J. Delony, judge of the 8th district court for the parish of Madison:

The petition of Mrs. Sarah E. Marshall, a resident and citizen of the State of New York, respectfully shows that she brought suit in your honl. court against David Mayer, a resident and citizen of the State of Mississippi, and Henry B. Holmes, sheriff of the parish of Madison, a resident of said parish and a citizen of the State of Louisiana, to have certain judgments of your honl. court ren-
50 dered against petitioner at the suit of said Mayer annulled and avoided and to have said Mayer and said Holmes, sheriff, enjoined and restrained from executing such judgments against petitioner.

That judgment was rendered in said suit and signed April 24th, 1886, rejecting plaintiff's demand and dissolving the injunction, with ten per cent. special damages for attorneys' fees and twenty per cent. general damages; that petitioner was aggrieved by such judgment and obtained an order of appeal to the supreme court of Louisiana, returnable at its February term, 1887.

That petitioner has filed her bond and perfected and prosecuted her said appeal, and the honl. supreme court of Louisiana has dismissed her said appeal for want of jurisdiction *ratione materiæ*, because no one of said judgments so sought to be annulled exceeded the sum of $2,000.00, two thousand dollars.

Your petitioner shows that each one of said judgments exceeds the sum of $100.00, one hundred dollars, and that she desires to prosecute an appeal to the honl. circuit court of appeals for the 2nd circuit and parish of Madison, which has jurisdiction of the appeal if the supreme court has not.

Wherefore petitioner prays for a devolutive appeal, return-
51 able to the circuit court of appeals at its next regular term, to be holden in the parish of Madison, on the fourth Monday and 28th day of March, 1887, upon her giving bond for costs in a sum to be fixed by your honor, and that the defendants H. B. Holmes,

by personal or domiciliary service, and the defendant D. Mayer, by service on his attorney-at-law, A. L. Slack, Esq., be cited to appear and answer.

WADE R. YOUNG, *Att'y.*

Order.

The foregoing petition considered, it is ordered that a devolutive appeal be granted as prayed for upon plaintiff's executing bond, with solvent security, in the sum of fifty dollars, conditioned according to law, said appeal being returnable to the circuit court of appeals for second circuit of the State of Louisiana, sitting in and for the parish of Madison, on the 4th Monday of March, A. D. 1887; also let citations issue.

Done and signed at chambers this 12th day of March, A. D. 1887.

E. J. DELONY,
Judge 8th Judicial Dist.

(Endorsed:) "No. 645. 8th district court, Madison parish, La. Mrs. Sarah E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* Petition and order of appeal. Filed March 15th, 1887. F. M. Dawson, clerk."

52 *Appeal Bond.*

8th Dist. Court, Parish of Madison.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.* } No. 645.

Know all men by these presents that we, Mrs. Sarah E. Marshall, as principal, and F. L. Maxwell, as surety, are held and firmly bound unto F. M. Dawson, clerk of district court, & David Mayer and H. B. Holmes, sheriff, in the full sum of $250.00, two hundred and fifty dollars; for the payment of which, well and truly to be made to them, their administrators, heirs, and assigns, we bind ourselves, firmly and *in solido,* by these presents.

The condition of the above obligation is such that whereas the above-bound principal has taken a devolutive appeal from the judgment rejecting her demand and dissolving the injunction in the above-entitled suit, returnable to the circuit court of appeals: Now, therefore, if she shall prosecute her said appeal and shall satisfy whatever judgment may be rendered against her, or if the same shall be satisfied by the proceeds of the sale of her estate, real or personal, if she be cast in her appeal, this bond to be null and void; otherwise to remain in full force and virtue and the said surety to be liable in her stead.

MRS. SARAH E. MARSHALL,
P'r WADE R. YOUNG, *Att'y.*
F. L. MAXWELL.

53 (Endorsed:) "No. 645. 8th district court, Madison parish, La. Mrs. Sarah E. Marshall *vs.* H. B. Holmes, sheriff, *et al.* Bond for appeal. Filed March 15th, 1887. F. M. Dawson, clerk."

And the following proceedings were had in the honorable court of appeals for the 2nd circuit of the State of Louisiana in this case, to wit:

Minutes of Circuit Court.

In the Circuit Court of Appeals.

On Monday, the 28th day of March, A. D. 1887, the following entry was made upon the minutes of the circuit court, Minute Book "A," page 43, viz:

Minutes.

"Mrs. SARAH E. MARSHALL, Appellant,
vs.
H. B. HOLMES, Sheriff, *et al.*, Appellees. } No. 37, C. C. No. 645, D. C.

In this case briefs were filed by Wade R. Young, Esq., counsel for plaintiff & appellant, and by Messrs. Stone & Murphy and A. L. Slack, counsel for defendant, D. Mayer, appellee.

And on Tuesday, the 29th day of March, 1887, the following entry was made upon the minutes of the circuit court on Minute Book "A," page 44, viz:

Minutes.

"Mrs. SARAH E. MARSHALL, Appellant,
vs.
H. B. HOLMES, Sheriff, *et als*, Appellees. } No. 37, C. C. No. 645, D. C.

This case, being called for hearing, was argued orally by Wade R. Young, counsel for plaintiff and appellant, and by Messrs.
54 John B. Stone and A. L. Slack, of counsel for defendant Mayer, appellee, and case taken under advisement.

And on Wednesday, the 30th day of March, A. D. 1887, the following entry was made upon the minutes of the circuit court of appeals on Minute Book "A," page 44, viz:

Minutes.

"Mrs. SARAH E. MARSHALL, Appellant,
vs.
H. B. HOLMES, Sheriff, *et al.*, Appellees. } No. 37, C. C. No. 645, D. C.

In this case Judge Clinton pronounced the opinion & decree of the court, and the decree is in the words and figures following, to wit:

"It is therefore ordered, adjudged, and decreed that the judgment appealed from is so amended as to reduce the amount of the general damages allowed from twenty per cent. to ten per cent. upon the amounts of the judgments enjoined, and that as thus amended the judgment is affirmed. It is ordered that the defendant pay the costs of this appeal and plaintiff the costs of the court below." Petition for rehearing filed on part of appellant.

Opinion and Decree of Circuit Court.

Mrs. S. E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.*

At the March term of this court, in 1885, an appeal was
55 before us in the suit of D. Mayer *vs.* Wm. Talliaferro and Mrs. S. E. Marshall. In that case Mayer had sued Talliaferro and Mrs. Marshall *in solido* for supplies furnished and mules sold to Talliaferro to enable him to raise a crop during the year 1884 upon the Cabin Teele plantation, belonging to Mrs. Marshall, under a contract made between Mayer and Boyd, the agent of Mrs. Marshall. In that contract it was agreed by Boyd, acting as the agent of Mrs. Marshall, that out of the crops raised by her tenant during that year she would turn over to Mayer sufficient to pay for the supplies furnished and the price of the mules sold to the tenants.

Mayer averred in his petition that Mrs. Marshall had received from the tenant more than enough cotton to pay for the mules and supplies furnished by him, and that she had failed and refused to turn over cotton to him to pay for any portion of his demand.

The defendant denied that she was in any manner bound to plaintiff and denied that Boyd, as her agent and manager of her plantation, had any authority to enter into any such agreement for her.

Upon the trial of that suit in the court below there was judgment in favor of the plaintiff against both defendants *in solido*, and upon appeal to this court it was held that under the terms of the
56 contract entered into between Boyd, as agent for Mrs. Marshall, she was not personally bound for the debt for supplies, &c., furnished to Talliaferro, but that the contract of her agent bound her to waive her privilege as lessor in favor of Mayer to the extent of his advances and the price of the mules, and judgment was rendered against her to the extent of the value of the cotton received by her from Talliaferro. It appears from the record in this present suit, and it was so stated upon the trial of the former case on appeal, that Mayer had instituted at the same time twenty-three other suits against other tenants on the plantation and Mrs. Marshall for advances to them under the same contract made with Boyd as agent, and that an agreement had been entered into by the counsel for plaintiff and defendants in these suits that the suit should be tried against Talliaferro and Mrs. Marshall as a test case, and that whatever judgment was rendered in that case should be decisive of

the issues in all of the other cases, and that judgments should be entered up in all of the cases in accordance with the final decision in the Talliaferro case. After the decision of this court in the Talliaferro suit the plaintiff's counsel proceeded in the district court with the trial of the other suits, and judgments were rendered against the various tenants for the amounts found to be due
57 by them and against Mrs. Marshall for the value of the cotton received by her from the various tenants. In all of these cases Mrs. Marshall was represented by counsel.

A few days after these judgments were rendered Mrs. Marshall instituted the suit now before us for review. She alleges in her petition that the judgments rendered against her in the suit against Talliaferro and herself and the judgments against her in all of the other twenty-three suits were obtained upon false testimony and forged documents and asks to have said judgments annulled and avoided, and sued out an injunction against Mayer and the sheriff to restrain them from executing said judgments or either of them. The defendant Mayer filed an exception and plea of estoppel and *res adjudicata*, and "that the plaintiff was estopped by her own acts and declarations and by her laches from urging the nullity of the judgments complained of, and that said judgments have the force and effect of the thing adjudged, and that they cannot be attacked or enjoined for any of the grounds set forth in her petition.

The judge *a quo* referred these exceptions and pleas to the merits and defendant then filed a general denial. Upon trial below
58 there was judgment in favor of the defendant rejecting plaintiff's demand, with thirty per cent. damages, and dissolving the injunction.

The plaintiff took an appeal to the supreme court of the State. That court dismissed her appeal for the want of jurisdiction *ratione materiæ* for the reason that, although the aggregate amount of all of the judgments sought to be annulled was sufficient to give the court jurisdiction, the highest amount involved in any one of the judgments sought to be annulled was only $361.20, and that, as plaintiff could not have appealed that suit to the supreme court, she could not give that court jurisdiction by cumulating in one suit an action to annul several judgments aggregating an amount sufficient to give the court jurisdiction.

After the dismissal of her suit by the supreme court she prosecutes an appeal to this court, and the judgment rendered against her is now before us for determination.

The suit of Mayer *vs.* Talliaferro & Mrs. Marshall, which was decided by this court at the March term in 1885, and which under the agreement entered into in that case became the basis of the judgments rendered in the other suits, was a long and hotly contested litigation, and for a statement of the facts and issues therein
59 involved we refer to our opinion rendered in that cause. In that suit the issue was presented by the plaintiff in his pleadings and in the evidence that he sought to bind Mrs. Marshall under a written agreement made by her agent, Boyd, in which it was stipulated that she would turn over out of the first cotton ginned by

Talliaferro an amount sufficient to pay plaintiff's demand, and that she had rendered herself liable for the debt by taking the cotton and refusing to turn over any part thereof to plaintiff.

The defendant denied that her agent had any authority to enter into any such agreement for her, and that she was not bound in any manner by the contract. It was not pretended that the agent had made no such agreement, but that he was not authorized by her to do so. There was a large number of witnesses examined on the trial of the case to establish the authority of Boyd to make the contract. Previous to the trial in the court below Mrs. Marshall's testimony as to the extent and scope of Boyd's agency was taken by commission on her behalf, and upon the trial the testimony of her son, S. D. Marshall, in her defence was taken in open court as to the authority of Boyd. Mrs. Marshall denied that she had ever authorized Boyd, as her agent and manager, to make her responsible for supplies, &c., furnished to her tenants, and that her plan of
60 administering her plantation was to allow portions of it to go uncultivated rather than to incur the risks incident to buying mules and furnishing supplies for tenants. There was a mass of testimony offered by plaintiff in that suit to establish Boyd's authority to enter into the contract, and, among othere vidence introduced, the plaintiff and his two clerks swore to the existence of a letter which had been written by Mrs. Marshall to her agent, and that the letter was lost, and they proved its contents, and they swore that the lost letter authorized Boyd to make arrangements with some merchant to provide the tenants with supplies, &c. In the opinion we held that the contents of the letter as sworn to by the witnesses was not inconsistent with Mrs. Marshall's testimony as to her plan of cultivating her plantation, and stated in the opinion that she had not been interrogated specially in regard to that letter. The letter was only one means of proof of Boyd's authority. We found other evidence in the record strongly corroborating the testimony of plaintiff in that suit as to the authority of Boyd, and particularly two letters from her son, S. D. Marshall, with whom she had lived and who was her general agent. The contention upon the part of Mrs. Marshall in this suit to annul the judgment in that case as well as in the other suit is that the lost letter was either a forgery or its
61 existence & contents were proved by false testimony, fraudulently procured by Mayer, and that therefore pleas of estoppel on account of laches and of *res adjudicata* could not be plead- in bar of a suit to annul the judgments. The issues tried and determined in the original suit were as to whether Boyd had made the contract alleged upon in the plaintiff's petition and whether he was authorized to do so by Mrs. Marshall, and whether or not she had rendered herself liable to plaintiff by her failure to comply with her contract. All of these issues were tried, and, after able and elaborate arguments, both oral and written, on behalf of Mrs. Marshall, were fully determined in this court against her. Upon the trial in the court below, after the evidence had been introduced of the existence and contents of the lost letter, no motion was made by Mrs. Marshall's attorneys for a continuance on the ground that

they were taken by surprise at the evidence in regard to the letter and its contents, and after the rendition of the judgment in the court below the defendant did not make that a ground in a motion for a new trial. The counsel for plaintiff contends that the issue which counsel was called upon to meet, as shown by the pleadings in those suits, was as to whether Mrs. Marshall was bound *in*
62 *solido* with her tenants for supplies, &c., furnished by D. Mayer. The argument is very ingenious, but untenable.

Mrs. Marshall was sued on a contract entered into by her agent; the plaintiff's counsel and the trial judge concluded that under that contract, which was in writing and its genuineness was never contested, *that* defendant had made herself liable for the entire debt because she had received the crops raised by her tenant and refused to turn over any portion of it to plaintiff. The question at issue on the trial of the cause in the court below and in this court in 1885 was not as to what was the proper interpretation of the contract made by Boyd with plaintiff, but the issue was as to Boyd's authority to make the contract.

Nearly the entire evidence taken on behalf of both parties to that suit was as to the authority of the agent to enter into the contract. The question as to the proper interpretation of the contract was one of law and could not be changed by evidence. The court below determined after a long trial that Boyd was authorized to enter into the contract, and that conclusion was reached after evidence had been received as to the contents of the lost letter; and no effort was made for a continuance on the ground that defendant was surprised by the evidence of the existence of such a letter, to enable
63 counsel to rebut the proof offered. The judgment of the court below was affirmed by this court. We held that Boyd was authorized to enter into the contract with Mayer and that Mrs. Marshall was bound by his acts.

The sole issue of fact presented by Mrs. Marshall in the present case to annul the judgments rendered in that case is as to the authority of her agent to bind her, and that was the issue which was determined against her upon the former trial.

The grounds on which an action of nullity to avoid a final judgment can be maintained are so well defined in our law (C. P., 606–'7) and jurisprudence that there is no room for a difference of opinion, and we find that counsel on both sides of this case are in accord as to the scope and bearing of that action. The doctrine of our courts is well stated in Perry *vs.* Rice, 31 A., 288. The party applying for relief must exhibit a case when the execution of the judgment would be against good conscience, & it must show matter of which the defeated party could not avail himself in the trial of the former suit, or that he was prevented from availing himself of by accident or fraud, or could not have known of before by reasonable diligence. This rule clearly excludes a party from attacking a judgment
64 rendered on false testimony, which could have been contradicted in the former suit, or on false documents whose genuineness was put at issue and decided, unless he was prevented from

obtaining & introducing the evidence of the fraud of the opposite party.

The rule, both in equity and at law, is that a judgment cannot be annulled for causes or grounds which might have been set up before judgment. 12 A., 197; 3 A., 646; 6 A., 799; 14 A., 656; 20 A., 521 & 551; 21 A., 166 & 465; 28 A., 276.

An examination of the decision of the United State circuit court *court* in 8 Federal Reporter, p. 177, satisfies us that the doctrine therein announced is the same as that consecrated in our jurisprudence. On page 180 it is stated the ground must be one "of which the injured party could not have availed himself at law, but was prevented by fraud or accident unmixed with any fault or negligence in himself or agents." This is the language of Chief Justice Marshall, and it has been repeatedly reiterated by his successors. In the 8th Otto, p. 61 to 71, the court say: "A judgment will not be set aside because it was founded on perjured evidence or a fraudulent instrument or for any other matter which was actually
65 presented and considered in the judgment assailed. It must appear that the judgment was obtained directly by fraud or the court will not go again into the merits."

Fraud vitiates everything, even a judgment; but when the question of fraud is put at issue and is decided it cannot again be raised.

There is nothing in any decision we can find which supports plaintiff's action from a legal standpoint. All the points raised in this suit were urged in the former suit and decided by us against her. We, being fallible, may have erred, but that is no ground to annul the judgment. The question raised now was directly at issue then and was fully and ably defended by her counsel. Plaintiff has entirely failed to bring herself within the rules of law for attacking that judgment, and it must be forever held as terminating the issues decided by it. "Causes would never terminate if injunctions could stop execution and try matters over again which might have been offered in defence before judgment was given." 8 U. S., 513. The judgment of the court below in rejecting plaintiff's demand
66 dissolved the injunction with ten per cent. damages for attorneys and twenty per cent. general damages on the amount of the judgments enjoined.

We think that the damages allowed are too great and should be reduced to ten per cent. damages for attorneys' fees upon the amounts of the judgments enjoined and ten per cent. on the amount of the judgments as general damages.

It is therefore ordered, adjudged, and decreed that the judgment appealed from is so amended as to reduce the amount of the general damages allowed from twenty per cent. to ten per cent. upon the amount of the judgments enjoined, and that as thus amended the judgment is affirmed. It is ordered that the defendant pay the costs of this appeal and plaintiff the costs of the court below.

Signed March 30, 1887.

THOS. P. CLINTON,
A. A. GUNBY,
Judges of 2nd Circuit.

(Endorsed:) "No. 37, C. C. Mrs. S. E. Marshal *vs.* H. B. Holmes *et al.* No. 645, D. C. Opinion & decree. Filed March 30, 1887. F. M. Dawson, clerk."

67 *Petition for Rehearing.*

Circuit Court of Appeals for the 2nd Circuit and Parish of Madison.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et als.*

The plaintiff and appellant respectfully moves for a rehearing of the cause, for the purpose of having the court pass upon the question of jurisdiction presented by the application for the removal of the suit to the circuit court of the United States for the western district of Louisiana.

WADE R. YOUNG, *Att'y.*

(Endorsed:) "No. 37, C. C. Mrs. S. E. Marshall *vs.* H. B. Holmes, Sheriff, *et als.* No. 645, D. C. Petition for rehearing. Filed March 30th, 1887. F. M. Dawson, clerk."

Minutes of Circuit Court.

On Wednesday, the 30th day of March, 1887, the following entry was made upon the minutes of the 2d circuit court of appeal-, Book A, page 45, viz:

In these cases the following waiver was filed:

Minutes.

"2nd Circuit Court of Appeals, Madison P'h, La.

H. B. HOLMES, Sheriff, *vs.* MADISON PARISH. — No. 35, C. C. No. 731, D. C.

Mrs. S. E. MARSHALL *vs.* H. B. HOLMES, Sheriff, *et al.* — No. 37, C. C. No. 645, D. C.

and

Mrs. S. E. MARSHALL *vs.* D. MAYER *et al.* — No. 36, C. C. No. 711, D. C.

68 Counsel for pl'ff and def'ts in said above causes hereby waive the delays authorized by law in which to apply for rehearing this 30th March, 1887.

(Signed) STONE & MURPHY, *Att'ys.*
A. L. SLACK, *Att'y.*

I waive the legal delays for rehearing in suit No. 36.
(Signed) WADE R. YOUNG,
Att'y for Mrs. Marshall."

And on Wednesday, the 30th day of March, 1887, the following entry was made upon the minutes of the 2nd circuit court on Book "A," page 46, viz:

Minutes.

"Mrs. SARAH E. MARSHALL, Appellant, } No. 37, C. C. No. 645,
vs. D. C.
H. B. HOLMES, Sheriff, *et al.*, Appellees. }

In this case Judge Gunby pronounced the opinion and decree of the court on the application for rehearing filed on part of appellant, and the decree of the court is in the words and figures following, to wit: "We therefore affirm the trial judge's refusal to remove & refuse a rehearing."

Opinion & Decree on Application for Rehearing.

Mrs. SARAH E. MARSHALL }
vs.
H. B. HOLMES *et al.* }

Plaintiff moves for a rehearing on the ground that we did not formally pass upon her application to remove this cause to the United States circuit court for the western dist. of Louisiana. We failed to observe this question because we did not regard it at issue
in this appeal. It is only necessary to observe that if this
69 court had jurisdiction of the appeal because none of the judgments sought to be annulled exceeds $500.00, for the same reason this case was not removable to the Federal court. We need not examine or consider the grounds on which the lower court denied the removal, for the mere fact of our exercising appellate jurisdiction effectually establishes the non-removability of this cause. We therefore affirm the trial judge's refusal to remove & refuse a rehearing.

(Endorsed:) "No. 37. C. C. Sarah E. Marshall *vs.* H. B. Holmes *et al.* On application for rehearing. Filed March 30, 1887. F. M. Dawson, clerk."

Clerk's Certificate.

STATE OF LOUISIANA, }
Parish of Madison. }

8th District Court.

I, Francis M. Dawson, clerk of the eighth district court in and for the parish of Madison aforesaid and *ex officio* clerk of court of appeals for 2nd circuit of Louisiana in and for said parish, do hereby certify that the foregoing sixty-eight pages and sixteen lines, on

pages numbered 1 to 69, inclusive, contain a true, full, and complete transcript of all pleadings filed, all entries made upon
70 the minutes of the courts, and all proceedings had in the within styled and numbered suit in both the district and circuit court of appeals, and of all documents filed in said cause except the following: 1st, citations; 2d, citations of appeal and other mesne process (not contested); 3d, interrogatories propounded to witnesses; 4th, clerk's note of evidence and the documents offered in evidence and identified therewith; which omissions were made by instruction of plaintiff's counsel.

Seal Eighth Judicial District Court, Parish of Madison, State of Louisiana,

Witness my signature and official seal, at Tallulah, Madison parish, Louisiana, this 9th day of April, A. D. 1887.

F. M. DAWSON,
Clerk of 8th District Court & ex Officio Clerk of Court of Appeals for 2nd Circuit of Louisiana.

71 In the Supreme Court of the United States. Term, 1887.

To the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States:

The petition of Mrs. Sarah E. Marshall, a *feme sole*, a citizen of the State of New York, respectfully shows that in the year 1884 David Mayer, a citizen of the State of Mississippi, instituted the several suits described in her bill of complaint against petitioner and several other persons therein named, charging that he made advances of mules and necessary supplies to such persons, tenants on her "Cabin Teele plantation," for the said year 1884, upon the faith of a written contract entered into with her agent, E. Boyd, whereby she was bound *in solido* with said tenants and with each of them named to pay all indebtedness so made, by which petitioner, through her said agent Boyd, promised and bound herself to deliver unto said Mayer a sufficient amount of cotton to satisfy his claim for mules, supplies, and horses furnished to the tenants on said "Cabin Teele plantation" during said year and of the first cotton ginned for said tenants, having purchased said supplies and work stock from said Mayer in said year, and prayed for judgment *in solido* against petitioner and each of said tenants in said suits named for a balance claimed to be due.

That petitioner answered in each of said suits, specially denying that she ever authorized Boyd to make such contract as al-
72 leged, and averring that she was ignorant of the existence of such contract until long subsequent to the death of Boyd.

That the petitions and answers were the same in each of said suits numbered from 595 to 618, inclusive.

That the suit of D. Mayer *vs.* William Talliaferro and Mrs. Sarah E. Marshall, No. 607, was instituted as a test case to try the issues between Mayer and plaintiff and petitioner, the defendant, and the following agreement of counsel was entered on the minutes:

"In this case it is agreed between plaintiff and defendant, through their counsel, that this suit should be a test case of all the cases

numbered from 595 to 618, inclusive of both, and the final decision of this case shall be decisive of all issues involved in said cases of like character as those in this case being tried, and at the April term of the district court judgment by said court shall be rendered upon the issues as decided and passed upon in this case in the appellate court."

That upon the issues presented by the pleading and the agreement of counsel the parties went to trial.

That a trial was had and judgment rendered in the district court, January 22nd, 1885, in favor of plaintiff Mayer and against defendant Talliaferro and petitioner *in solido*.

That an appeal was presented to the court of appeals for the second circuit and an opinion and decree rendered in that court March 25th, 1885, amending the judgment of the district court and ordering petitioner to deliver to plaintiff Mayer a certain number
73 of pounds of cotton, and in default of such delivery to pay a certain sum of money.

That on April 15th, 1885, judgments were entered up against her in the several other suits in pursuance of the agreement of counsel.

That on April 20th, 1885, she filed her bill of complaint to have the judgments so rendered annulled and avoided on the ground that they were rendered on false and forged documents and false testimony fraudulently introduced in evidence, and obtained an injunction enjoining and restraining the plaintiff Mayer and Henry B. Holmes, sheriff, from executing said judgment.

That said twenty-four judgments had been rendered against her for the aggregate sum of more than $3,000.00, exclusive of interest and costs, in favor of the same plaintiff upon the same issue and upon the same testimony, and in her said bill of complaint she prayed to have them all annulled and avoided as to her on the same grounds.

That no objection was made to such cumulation, if any such could be made, and the defendant Mayer filed an exception and plea of estoppel and *res adjudicata*.

That on June 4th, 1885, being the first term of the court at which a trial of the suit could have been had, and before the trial thereof, petitioner filed her petition and bond, conditioned according to law, to remove the suit into the circuit court of the United States for the western district of Louisiana, on the ground that the suit was of a civil nature, in equity, wherein the matter in dispute exceeded, exclusive of costs, the sum or value of $500.00, in which there was a controversy between citizens of different States, and prayed
74 said court to accept said petition and bond and proceed no further in said suit.

That said court denied the right to remove the suit and refused to stay proceedings, and at the trial had on the merits April 24th, 1886, rendered judgment rejecting petitioner's demand for the nullity of the judgments and dissolving the injunction, with damages.

That an appeal was taken to the supreme court of Louisiana, re-

turnable at its February term, in the city of New Orleans, for the year 1887.

That the supreme court dismissed the appeal for the reason assigned, that a party cast in an action — nullity of twenty-four judgments in none of which the amount in dispute exceeds $2,000.00, brought in one petition, cannot sustain an appeal to the supreme court, although the amount involved in all the judgments together does exceed $2,000.00.

That an appeal was then taken to the court of appeals for the second circuit of the State of Louisiana, returnable at its regular term, in the parish of Madison, on the 4th Monday of March, 1887, and said court, in obedience to the mandate and decree of the supreme court, took jurisdiction of the appeal and affirmed the judgment of the district court denying the removal, for the reason assigned upon the authority of the aforesaid mandate and decree of the supreme court, that as no one of the judgments sought to be annulled exceeded the sum of $500.00 the amount in dispute in said suit did not exceed the sum or value of $500.00, exclusive of costs, and on March 30th, 1887, rendered final judgment, amending the judgment of the lower court in so far as to reduce the damages
75 on the dissolution of the injunction from 30 per cent. to 20 per cent. and in other respects affirming said judgment by rejecting the demands for the nullity of the judgment and dissolving the injunction.

Your petitioner shows that said court of appeals for the 2nd circuit is the highest court in the State of Louisiana in which a decision in the suit could be had in conformity to the mandate and decree of the supreme court, and that said final judgment and decree in such suit, by — petitioner claimed a title, right, privilege, or immunity under the Constitution or laws of the United States and the decision was against the title, right, privilege, or immunities specially set up or claimed by her, may be re-examined and reversed in this honorable court upon a writ of error.

She shows that she has been aggrieved by the judgment and decree of said court denying the right of removal specially set up and claimed by her, and for cause of error assigns:

1st. That the suit was of a civil nature in equity, being a suit to annul a judgment for causes that appertain to the merits of the question tried and tantamount to a bill in equity to set aside a decree for fraud, and constituted an original and independent proceeding.

Barrow *vs.* Hunton, 99 U. S., 80.
Stackhouse *vs.* Zuntz, 15 Federal Reporter, 481.

2nd. That the matter in dispute exceeded, exclusive of costs, the sum or value of $500.00.

That the defendant, David Mayer, had obtained twenty-
76 four judgments in twenty-four suits against petitioner for the aggregate sum of more than $3,000.00, exclusive of interest and costs, upon the same issues and the same testimony, in pursuance of the agreement of counsel, and the suit was brought to annul

each and all of said twenty-four judgments and to have said Mayer and said Holmes, sheriff, enjoined and restrained from executing or attempting to execute such judgment against the person or property of petitioner.

That if the matter in dispute is to be determined by the law and practice of the State of Louisiana the demands were properly cumulated and the matter in dispute was not the sum or value of one demand for the nullity of one judgment, but the sum or value of the demands for the nullity of all the judgments, being the aggregate amount of the judgments, principal, interest and costs, at the institution of the suit.

Louisiana Code of Practice, art. 151.
Bruneau *vs.* Haughton, 16 Louisiana Annual, 47.
Lemle *vs.* Routon, 33 Louisiana Annual, 1006.
State *ex rel.* Fisk *vs.* Police Jury, 34 La. An., 95.
Pease *vs.* Police Jury, 34 La. An., 137.

That the doctrine of this honorable court and of the supreme court of Louisiana, that distinct demands in favor of or against distinct parties cannot be joined to give the court jurisdiction as to amount, has no application to this case.

Adams *vs.* Crittendon, 106 U. S., 576.
Prevost *vs.* Brig *et al.*, 5 Martin N. S., 87.
U. S. *et al. vs.* Cochran *et al.*, 5 Robinson, 120.

77 That the character of the cases themselves is always open to an examination, for the purposes of determining whether *ratione materiæ* the courts of the United States are incompetent to take jurisdiction thereof, and State rules on the subject cannot deprive them of. Barrow *v.* Hunton *supra.*

3rd. That the controversy was between citizens of different States, petitioner being a citizen of the State of New York and David Mayer a citizen of the State of Mississippi and Henry B. Holmes, sheriff, a citizen of the State of Louisiana.

4th. That the petition and bond, conditioned according to law, *was* filed at the term at which the suit could be first tried and before the trial thereof.

Your petitioner shows that she has a right to a writ of error from this honorable court to the said court of appeals to have such judgment so denying the right of removal specially set up and claimed by her reviewed and reversed in this honorable court.

Kannouse *vs.* Martin, 14 How., 23.
" " " 15 " 197.

And to a supersedeas and affirmative order continuing in force the preliminary injunction restraining the said Mayer and said Holmes, sheriff, from executing or attempting to execute against her personal property the judgment sought to be annulled.

Foster *vs.* Kansas, 112 U. S., 201.
Slaughter-house Cases, 10 Wallace, 273.

And herewith tenders a bond, properly conditioned, for such writ of error and supersedeas and affirmative order.

78 *Ex parte* Milwaukee & Min. R. R. Co., 5 Wal., 188.

Wherefore, the premises considered, your petitioner prays for a writ of error, directed to the court of appeals for the second circuit of the State of Louisiana, to remove said suit into this honorable court, returnable at its next regular term, and for a supersedeas, to take effect from the serving of the writ, suspending all proceedings to enforce the judgment and decree in this case in the said court of appeals or in the 8th district court, from which the case was appealed, and for an affirmative order continuing in full force and effect the preliminary injunction granted herein restraining said Mayer and said Holmes, sheriff, from executing or attempting to execute such judgments against the person or property of petitioner until the further order of this honorable court, and for a citation to the defendants in error, and that the aforesaid judgment and decree of the said court of appeals may be reviewed and reversed.

WADE R. YOUNG,
Of Counsel.

79 [Endorsed:] The writ may issue. M. R. Waite. May 12.

80 Supreme Court of the United States.

Mrs. SARAH E. MARSHALL
vs.
H. B. HOLMES, Sheriff, *et al.*

Know all men by these presents that we, Mrs. Sarah E. Marshall, as principal, and S. Duncan Marshall and John M. Marshall, as sureties, are held and firmly bound unto Henry B. Holmes, sheriff, and David Mayer in the sum of $5,000.00, five thousand dollars, to be paid to them, their executors or administrators; to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents.

Sealed with our seals and dated this fourth day of April, 1887.

Whereas the above-named Mrs. Sarah E. Marshall has prosecuted a writ of error to the Supreme Court of the United States to reverse the judgment rendered in the above-entitled suit by the circuit court of appeals for the second circuit, State of Louisiana:

Now, therefore, the condition of the above obligation is such that if the above-named Mrs. Sarah E. Marshall shall prosecute

81 *for* said writ of error to effect and answer all costs and damages if she shall fail to make good her plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Original signed) [SEAL.] SARAH E. MARSHALL.
[SEAL.] S. DUNCAN MARSHALL.
[SEAL.] JOHN M. MARSHALL.

Approved May 14, 1887.
(Signed) M. R. WAITE,
Chief Justice U. S.

STATE OF MISSISSIPPI, }
County of Adams. }

Before me, the undersigned authority, a notary public, duly commissioned and qualified in and for said State and county and authorized by law to administer oaths and take affidavits, personally came and appeared S. Duncan Marshall, a resident of the State of New York, and John M. Marshall, a resident of the State of Mississippi, the sureties in the foregoing obligation named, who, being by me duly sworn, depose and say that they are worth the sum of five thousand dollars each over all their just debts and liabilities and exclusive of property exempt by law from execution.

(Signed) S. DUNCAN MARSHALL.
JOHN M. MARSHALL.

Subscribed and sworn to before me this 4th day of April, 1887.

(Signed) [L. S.] FRED. PARSONS,
J. P. & ex Officio Notary Public.

82 STATE OF MISSISSIPPI, }
County of Adams. }

I certify that on this 4th day of April, 1887, before me personally appeared Mrs. Sarah E. Marshall, S. Duncan Marshall, and John M. Marshall, to me known to be the persons described in and who executed the foregoing instrument, and severally acknowledged to me that they executed the same as their own free act and deed for the uses and purposes therein mentioned.

(Signed) [L. S.] FRED. PARSONS,
J. P. & ex Officio Notary Public.

(Endorsed:) "Mrs. Sarah E. Marshall *vs.* H. B. Holmes, sheriff, *et als.* No. 37, C. C. No. 645, D. C. Bond. Filed May 21st, 1887. F. M. Dawson, clerk. Recorded in record of suits, Book C, folios 250 & 251."

STATE OF LOUISIANA, }
Parish of Madison. }

8th District Court.

CLERK'S OFFICE.

I, Francis M. Dawson, clerk of the 8th district court for the parish of Madison, State of Louisiana, certify that the foregoing is a true copy from the original bond, affidavit, and certificate and endorsements thereon as the — remains on file in my office.

Witness my signature and official seal this 7th October, A. D. 1887.

{ Seal of Eighth Judicial District Court, }
{ Parish of Madison, State of Louisiana. }

F. M. DAWSON, *Clerk.*

[Endorsed:] Copy of bond.

83 UNITED STATES OF AMERICA, *ss:*

[Seal of the Supreme Court of the United States.]

The President of the United States of America to the honorable the judges of the court of appeals for the second circuit of the State of Louisiana, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said court of appeals, before you or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Mrs. Sarah E. Marshall, plaintiff, and Henry B. Holmes, sheriff, and David Mayer, defendants, wherein was drawn in question the validity of a treaty or statute of or an authority exercised under the United States and the decision was against their validity, or wherein was drawn in question the validity of a statute of or an authority exercised under said State on the ground of their being repugnant to the Constitution, treaties, or laws of the United States and the decision was in favor of such their validity, or wherein was drawn in question the construction of a clause of the Constitution or of a treaty

84 or statute of or commission held under the United States and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission, a manifest error hath happened, to the great damage of the said plaintiff, as by her compaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington on the second Monday of October next, in the said Supreme Court to be then and there held, that, the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should done.

Witness the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court, the thirteenth day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

JAMES H. McKENNEY,
Clerk of the Supreme Court of the United States.

Allowed by—

M. R. WAITE,
Chief Justice U. S.

85 [Endorsed:] Writ of error (original). No. 37, C. C. No. 645, D. C. Filed May 21, 1887. F. M. Dawson, clerk.

86 The United States of America to Henry B. Holmes, sheriff, and David Mayer, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington on the second Monday of October next, pursuant to a writ of error filed in the clerk's office of the court of appeals for the second circuit of the State of Louisiana, wherein Mrs. Sarah E. Marshall is plaintiff in error and you are defendants in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error, as in the said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this thirteenth day of May, in the year of our Lord one thousand eight hundred and eighty-seven.

M. R. WAITE,
Chief Justice U. S.

87 [Endorsed:] Citation (original). No. 37, C. C. No. 645, D. C. Filed May 21st, 1887. F. M. Dawson, clerk.

On this twenty-first day of May, in the year of our Lord one thousand eight hundred and eighty-seven, personally appeared Francis M. Dawson before me, the subscriber, Willis H. McFarland, deputy clerk of 8th district court for the parish of Madison, State of Louisiana, and makes oath that he delivered a true copy of the within citation to Henry B. Holmes, sheriff of Madison parish, Louisiana, and to Aylmer L. Slack, Esq., attorney of record for David Mayer, the defendants in error, severally, on this 21st day of May, 1887, at Tallulah, in Madison parish aforesaid.

F. M. DAWSON.

Sworn to and subscribed the 21st day of May, A. D. 1887, before me—

{ Seal Eighth Judicial District Court, }
{ Parish of Madison, State of Louisiana. }

W. H. McFARLAND,
D'p'y Clerk 8th Dist. Court.

Endorsed on cover: Louisiana court of appeals, second circuit. No. 288. Mrs. Sarah E. Marshall, plaintiff in error, *vs.* Henry B. Holmes, sheriff, and David Mayer. Filed October 28, 1887.

C. G. Burgoyne's Printing Business, 146-150 Centre St., N. Y.

Supreme Court of the United States.

SARAH E. MARSHALL,
Plaintiff in Error,

AGAINST

DAVID MAYER and HENRY B. HOLMES,
Defendants in Error.

ERROR TO THE COURT OF APPEALS FOR THE SECOND CIRCUIT OF THE STATE OF LOUISIANA.

Statement of Facts.

David Mayer sued Sarah E. Marshall in the Eighth District Court for the parish of Madison in some twenty-two different suits. In each suit there was another defendant. Mayer recovered judgment in each suit. The judgment in each suit was for less than five hundred dollars.

Mrs. Marshall then commenced in the same court a suit against Mayer and the Sheriff Holmes holding executions to have the judgments so rendered annulled on the ground that they were obtained by fraud and forged documents.

The forgery alleged was of a letter from Mrs. Marshall

authorizing her agent to make the contracts on which Mayer had recovered the judgments.

All of which appears in the petition of plaintiff in error (Record, p. 1 @ 3).

The defendant in error Mayer pleaded to the petition (p. 6).

The plaintiff in error then filed her petition to remove the cause to the United States Circuit Court, and with it the proper bond (pp. 9 and 10).

The State Court refused to allow removal (p. 10).

Thereupon the defendants Mayer & Holmes both filed answers (pp. 11 and 12).

The case was then tried by the State Court and judgment given for defendants (p. 20).

An appeal of plaintiff to the Supreme Court of the State was dismissed on the ground that the only appeal was to the Circuit Court of the State (pp. 23 @ 25).

That Court affirmed the judgment of the Court below and from that judgment of affirmance the writ of error is taken to this Court.

Assignment of Error.

The error assigned is that the State Court erred in refusing or denying the petition of plaintiff to remove the cause to the United States Court, and in proceeding with the cause after the petition to remove and bond were filed.

ARGUMENT.

First. Whether the case was removable is a question properly raised by the writ of error.

Ins. Co. vs. Dunn, 19 Wallace, 214.

Second. The petition of nullity was an original suit within the meaning of the removal acts, and not a mere ancillary proceeding.

Barrow vs. Hunton, 99 U. S., 80, where this precise question, on an appeal from the United States Circuit Court of Louisiana, was considered.

In that case it was held that the United States Court had no jurisdiction, because the petition of nullity was founded on a mere question of regularity, which at common law would have been reached by a motion to open the default.

It was, however, directly stated that if the petition had been founded on fraud in obtaining the original judgments (p. 83), or through forgery of documents (p. 84), it could have been removed to the United States Court, and that Court would have had jurisdiction.

The petition of nullity in this case shows an original meritorious cause of action, and is not based on any mere practice question.

It shows that in the original suits judgment was obtained by means of a pretended letter from plaintiff in errror authorizing her agent to make the contract; that plaintiff in error was not present at the trial, and could not have anticipated any such evidence that there was no such letter; and that, if defendant Meyer ever saw any letter purporting to be such, it was a forgery.

This is a new question. It has nothing to do with the merits of the original suits.

The question to be tried on the petition of nullity was not whether plaintiff in the original suits should have recovered, but whether he procured his recovery in those suits by fraud or the exhibition of forged documents, to wit, the letter referred to.

The cases of Nonqui vs. Clapp, 101 U. S., 551, and Graham vs. R. R. Co., 118 U. S., 177, are inapplicable.

In those cases the bill was originally filed in the U. S. Court,

In the case at bar it was originally filed in the State Court.

That a bill so filed in the State Court of Louisiana may be removed was the precise question in Barrow vs. Hunton, 99 U. S., 80, and therein this Court classified the cases which could and could not be so removed, and we submit that the case at bar comes clearly within the class therein defined as removable.

That a removal may be sustained even when an original bill would not lie is held in Gaines vs. Fuentes, 92 U. S., 10, and in Clafflin vs. Ins. Co., 110 U. S., 81.

Third. The amount involved was sufficient to give the United States Circuit Court jurisdiction.

In the many cases in this Court where it is held that distinct claims cannot be united so as to give this Court jurisdiction of an appeal or writ of error, or the United States Circuit Court jurisdiction of an original or removed cause, the distinct claims referred to have always been held by different persons.

The reason of the rule was that there was between no two persons an issue involving a jurisdictional amount (see Moran vs. McMurray, 134 U. S., 159, and cases cited on p. 160).

In the case at bar, however, the different or distinct claims all belong to the same person, the defendant Mayer.

The matter in controversy in the suit of nullity was the validity of all these claims, and the controversy as to each and all of them was between complainant and defendant Mayer.

The matter in dispute between complainant and defendant Mayer was the sum of all these judgments—some three thousand dollars.

No case can be found which under such circum-

stances holds that the United States Court is without jurisdiction because of the amount involved (see Gibson vs. Shufeldt, 122 U. S., 27, for full discussion of this question).

Fourth. The judgment should be reversed and the cause remitted to the Court below, with instructions to grant the petition to remove of the appellant.

WHEELER H. PECKHAM,
Of Counsel for Appellant.

Office Supreme Court, U. S.
FILED
FEB 2 1887
JAMES H. MCKENNEY

Supreme Court of the United States.

SARAH E. MARSHALL, Plaintiff in Error,
versus
DAVID MAYER AND HENRY B. HOLMES, Defendants in Error. } No. 288.

ERROR TO COURT OF APPEALS FOR THE SECOND CIRCUIT OF THE STATE OF LOUISIANA.

BRIEF OF DEFENDANTS IN ERROR.

Statement of Facts.

The statement of facts in brief of plaintiff in error is correct as far as it goes, but the test case was tried in the District court more than two months before the others were heard, and judgments rendered on the same evidence, pursuant to the agreement of parties.

Judgments in the first case was rendered on 22d January, 1885; an appeal was taken and heard by the circuit and decree rendered 25th of March following. In April following, at the regular term of the District, answers were filed in the other cases, the same evidence offered, and judgments in accordance with the decree of the circuit court entered. No suggestion was made to the court before or at these trials that this former judgment had been obtained by the use of forged documents or false testimony, nor was delay asked to take the testimony of complainant or any other witnesses to disprove or refute the testimony of defendents' witnesses on the former trial, nor was any other proof offered than had been adduced in the trial of the first case.

Argument.

First. The amount involved was not sufficient to justify the removal of the cause, and the circuit court properly denied it.

Complainant has, according to the allegations of her bill, twenty-three causes of action, but no one of them involves a value of as much as five hundred dollars.

As the causes of action which she sets forth are not contradictory, and, therefore, under the laws of Louisiana, may be emulated or joined in the same suit, but for jurisdictional purposes each distinct cause of action must stand for itself. Thus, while one may in the same suit assert the ownership of a horse and also claim that defendant owes a sum of money, the value of the horse cannot be added to the sum of money to make either original or appellate jurisdiction.

The supreme court of Louisiana very tersely says: "Common sense and logic alike point to the rule that a cause not appealable in amount to this court for the review of the judgment rendered therein cannot be made appealable here to review the judgment rendered in actions of nullity in the same cause. (39 La Annual, 314.) The same principle applies in questions of removal.

If the original suit of D. Mayer *vs.* James Thomas, involving $105.16, was not removable, it is difficult to perceive how an action to annul the judgment rendered in it, can be made removable by simply joining with it other demands of a similar character, each one of which is independent and constitutes in reality a separate action, though joined in the same suit.

Second. The removal should not have been allowed, because the complainant practically seeks to have the Federal court review, the judgment of the State court in causes which were exclusively within the jurisdiction of the State court and which that court has finally decided.

In 99 U. S., 85, quoted by plaintiff's counsel, the court

says: "The character of cases themselves is always open to examination for the purpose of determining whether *ratione materia* the courts of the United States are incompetent to take jurisdiction thereof."

An examination of the case under consideration shows that David Mayer instituted twenty-three suits against as many tenants on complainant's plantation. She was made a party defendant in each case and judgment prayed against her for the amount due by her co-defendant. One of these cases was selected as a test case and tried, the plaintiff introducing all the evidence on which he relied to prove that Mrs. Marshall had authorized her agent to make contracts with persons furnishing her tenants necessary supplies, by which she waived in their favor her superior lien as lessor. Among the testimony offered was the sworn statement of Mayer that Mrs. Marshall had written him a letter on the subject, in which admissions were made with respect to those contracts. This was corroborated by two witnesses who had read the letter, but the document itself was lost or mislaid. This evidence was put in on the 21st and 22d of January. The case appealed to the circuit court and decided on 25th of March, sixty days afterwards. There was no pretense that Mrs. Marshall was ignorant, after the 22d of January, that Mayer claimed to have received such a letter from her, or that she was prevented by fraud or accident from asserting in the subsequent trials, which took place in April, that she had not written such a letter, and the testimony relating to the same was false. As shows, however, by the opinion of the circuit court, she did assert at the first trial the falsity of this testimony, and the court passed upon this very question.

There is nothing to show how much weight was given to the letter, nor is there any allegation that without it judgment would not have been rendered for Mayer. On the contrary, it appears that much other evidence was introduced and considered by the court in reaching its conclusions.

The State court has, therefore, in each of these cases, con-

sidered Mrs. Marshall's denial of authority to her agent, and decided against her.

She now seeks by cumulating twenty-three distinct demands in one suit to have this court review the judgments which have been rendered against her. In Nougue *vs.* Clapp, 101 U. S., 554, your honors said: "We think for this court, after all this has been done, to undertake to decree that what that court did is void, to sit in review on its judgment and reverse its decree, and set aside its sale in a case where its jurisdiction is undoubted, is unwarranted by the relations which exist between the two courts. It would be an invasion of the powers belonging to that court, and such a doctrine would, upon the *simple allegation of fraud* practiced in the court, enable a party to *retry* in a Federal court any case decided agains him in a State court."

In 118 U. S., Graham *vs.* Boston, 177, the foregoing doctrine was reaffirmed.

The judgment should be affirmed at appellant's cost.

CHAS. J. BOATNER,
Of Counsel for Appellant.

IN THE

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 288.

MRS. SARAH E. MARSHALL

vs.

H. B. HOLMES, SHERIFF, AND DAVID MAYER.

The defendants in error, David Mayer and H. B. Holmes, respectfully move to dismiss the writ of error granted herein, on the ground that plaintiff in error, after the refusal of the State court to grant the order of removal prayed for by her, caused the record to be made out and certified by the clerk of the said court, and filed the same in the United States circuit court for the western district of Louisiana.

That defendants in error appeared in said court and moved the dismissal of the cause, which motion was duly tried by said court and, after argument of counsel, sustained, and a final decree rendered dismissing the same. Defendant in error pleads said judgment and decree is a bar to the prose-

cution of the writ of error herein, and as a final decision against said plaintiff in error on the question of removal; wherefore they pray that the writ of error herein granted be dismissed.

CHAS. J. BOATNER,
Of Counsel.

Before me, the undersigned authority, personally came and appeared C. J. Boatner, counsel for defendant in error in this cause, who, after being duly sworn, deposes that the facts stated in the foregoing motion are true.

Sworn and subscribed to before me this 7th day of April, 1891.

[SEAL.] JAMES D. MAHER,
Notary Public.

Office Supreme Court U. S.
FILED.
APR 7 1891
JAMES H. McKENNEY
CLERK

Supreme Court of the United States.

OCTOBER TERM, 1890.

No. 288.

MRS. SARAH E. MARSHALL, PLAINTIFF IN ERROR,

vs.

HENRY B. HOLMES, SHERIFF, ET AL.

The defendants in error respectfully pray leave of the Court to annex to the record herein a certified transcript of the proceedings had in this cause in the United States circuit court for the western district of Louisiana, in support of their motion to dismiss the writ of error herein, and they ask a delay of ten days for that purpose.

C. J. BOATNER,
Of Counsel for Defendants in Error.